Health Care Reform: Employer Mandate

Overview:

Beginning January 1st, 2016 employers (those employing 50 or more full-time equivalent employees) will be subject to a penalty if one or more full-time employees receives a tax credit or cost-sharing reduction (a "Subsidy") based on one of the following conditions:

1. The employer doesn't offer coverage, or

2. The coverage offered by the employer either does not provide minimum value (as defined by a 60% actuarial value) or is “unaffordable” (defined as no more than 9.56% of EE annual income) to the employee.

Determining if an Employer is an Applicable Large Employer (ALE)

Two provisions of the Affordable Care Act apply only to applicable large employers (ALEs):

- The employer shared responsibility provisions; and
- The employer information reporting provisions for offers of minimum essential coverage

- Whether an employer is an ALE is determined each calendar year, and generally depends on the average size of an employer’s workforce during the prior year.
- If an employer has fewer than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an ALE for the current calendar year. Therefore, the employer is not subject to the employer shared responsibility provisions or the employer information reporting provisions for the current year.
- If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year, and is therefore subject to the employer shared responsibility provisions and the employer information reporting provisions.
- To determine its workforce size for a year an employer adds its total number of full-time employees for each month of the prior calendar year to the total number of full-time equivalent employees for each calendar month of the prior calendar year and divides that total number by 12.

What are the penalties?

- Failure to offer Minimum Essential Coverage (MEC)- A large employer that fails to offer minimum essential coverage to all full-time employees must pay an excise tax of $**2,320 per full-time employee**. The monthly penalty is equal to $2,320 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.
- Failure to Offer “Affordable” Minimum Essential Coverage - A large employer that offers minimum essential coverage that is not “affordable” will be subject to an excise tax of **$3,480 per employee** divided by 12, for each full-time employee receiving subsidized coverage through an Exchange for the

month. The penalty will not be greater than the monthly penalty that would apply if employer offered no coverage at all ($2,320 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 in calculating the penalty.

Note: *If an individual has access to employer-sponsored insurance that is "affordable" and provides "minimum value" he/she is not eligible to receive a subsidy or reduction in cost sharing on the Exchange, even if he/she meets the federal poverty level criteria.*

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 the previous year will determine whether it will be subject to the employer penalties in the following year.
- An employer will not be considered to employ more than 50 full-time employees if (a) its workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and (b) the employees in excess of 50 employed during the 120-day period were seasonal workers.

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 for purposes of determining if the employer is a "large employer," 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.

How do you determine Minimum Essential Coverage?

The IRS released three possible methods for determining whether employer coverage meets the 60% actuarial value threshold. The three methods are:

1. Actuarial Value (AV) or Minimum Value (MV) Calculator – HHS would develop an AV calculator to determine a plan's value for the individual and small group insurance markets. HHS and Treasury would develop an MV calculator that would be similar to the AV calculator that insured large group or

self-funded plans could use to determine whether the plan provides the minimum 60% value.

2. Design Based Safe Harbors - The IRS would develop an array of design-based safe harbors in the form of checklists that would provide a simple, straightforward way for plan sponsors – without the need of actuarial expertise or performing calculations. If your self-funded plan's terms are consistent with or more generous than any one of the safe harbor checklists, your plan would be treated as providing minimum value.
3. Actuarial Certification - Plans with nonstandard features that are not able to use the AV or MV calculator or the safe harbor checklists would have to obtain appropriate certification of the plan's value by an actuary

How do you determine Affordability?

The "affordability" test (for purposes of the tax credit) will be calculated by determining whether the premium contribution for self-only coverage (as opposed to family or other coverage) exceeds 9.56% of the taxpayer's household income. This means employers can avoid the play or pay penalty by charging a self-only premium that is less than 9.56% of an employee's household income (even if the family premium exceeds 9.56% of household income).

If the employee's contribution exceeds 9.56% of the employee's W-2 wages, but the premium is still less than 9.56% of the employee's household income, the employer will still be deemed to have offered affordable coverage. Each employer can determine whether it has met the safe harbor after the end of the calendar year by comparing each employee's W-2 wages to that employee's premium for the year.

Note: An employer in required to offer dependents the opportunity to purchase coverage, but not pay for any portion of the dependent coverage. In addition, a dependent if defined as a child, not a spouse, meaning that technically employers are not required to offer employee' spouses the opportunity to enroll in coverage.

Resources:

For more information visit the IRS website