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Updated October 2015

Affordable Care Act: Employer Mandate Questions

1 Are you familiar with the Affordable Care Act employer mandate (a/k/a "pay or play")?

Subject to certain transition rules for 2015, the employer mandate generally requires applicable large employers to either (i) offer adequate health coverage to all full-time employees (and their dependents) effective January 1, 2015, or (ii) pay penalties.

2 Does your company have 50 or more full-time (and full-time equivalent) employees?

The employer mandate applies to any employer that employs an average of 50 or more full-time (and full-time equivalent) employees during the preceding calendar year.* For this purpose, full-time employees are those employed an average of 30 or more hours a week (130 a month). Full-time equivalent employees generally are determined by adding all hours of all employees who average less than 30 hours a week for a month and then dividing that total by 120. ***Note that a special transition rule applies for 2015 (but not for reporting requirements), applying a 100 or more full-time (and full-time equivalent) employee threshold.**

3 Are there any companies related (e.g., by common ownership) to your company?

Whether an employer is an applicable large employer is determined on a "controlled group" and "affiliated service group" basis such that, e.g., a parent company that owns 80% of a subsidiary is treated as a single employer with such subsidiary. (In contrast, the applicable employer mandate penalties actually imposed apply on a controlled group/affiliated service group member-by-member basis.)

4 Does your company offer health insurance coverage to all full-time employees?

If your company is subject to the employer mandate, then unless your company offers health coverage to at least 95% (70% for 2015) of its full-time employees (i.e., those who average 30 or more hours a week), and their dependents, that is both "affordable" (employee-only premium generally is 9.5% or less of household income) and provides "minimum value" (plan's share of total cost of benefits is 60% or more), your company will be subject to nondeductible penalties.

5 Does your company have any full-time employees who work only on a seasonal basis?

Seasonal employees who work full-time (i.e., average 30 or more hours a week) are subject to the employer mandate, just like any other full-time employees.

6 Does your company offer health insurance coverage to dependents of full-time employees?

The employer mandate also applies to the dependents of full-time employees. (For this purpose, the employer mandate defines a dependent as a child of the employee who has not attained age 26; a spouse of an employee is not the employee's dependent.)

7 What are the employer mandate penalties and how are they determined?

The first penalty applies if the following 2 requirements are met:

(1) The employer fails to offer "minimum essential coverage" to more than 5% (more than 30% for 2015) or, if greater, more than 5 of its full-time employees (and their dependents), and

(2) At least one full-time employee purchases health insurance coverage through the Health Insurance Marketplace (a.k.a., the "Exchange") and is entitled to a premium tax credit or cost-sharing subsidy.

This first penalty (which is indexed for inflation) for 2015 is equal to **$173.33/month (i.e., $2,080/year) x the total number of full-time employees in excess of 30 (in excess of 80 for 2015)**.

The second penalty applies if the employer offers minimum essential coverage to its full-time employees, BUT

(1) the coverage is not affordable (employee-only premium generally is more than 9.5% of household income) or does not provide minimum value (plan's share of total cost of benefits is less than 60%), and

(2) a full-time employee opts out and purchases health insurance coverage through the Exchange and is entitled to a premium tax credit or cost sharing subsidy.

This second penalty (which is indexed for inflation) for 2015 is equal to the lesser of (i) **$260/month (i.e., $3,120/year) x the number of such full-time employees who purchase health insurance coverage through the Exchange and are entitled to a premium tax credit or cost sharing subsidy**; or (ii) the amount the first penalty would be if the employer had not offered minimum essential coverage.

8 When is an employee eligible for an Exchange premium tax credit or cost sharing subsidy?

An employee who is not offered health coverage by his or her employer that is affordable and provides minimum value generally is eligible for a premium tax credit or cost sharing subsidy through the Exchange if his or her household income is between 100% and 400% of the federal poverty level. (For 2015, the federal poverty levels that apply are as follows: (i) Single person: $11,670 to $46,680; (ii) Couple: $15,730 to $62,920; (iii) Family of 3: $19,790 to $79,160; (iv) Family of 4: $23,850 to $95,400; and (v) Progressively higher amounts as family size increases.)

9 Is your company health plan a non-calendar year plan?

If your company health plan was not a calendar year plan as of December 27, 2012 (and the plan year has not been modified after such date to begin at a later calendar date), then it is possible that your company may qualify under a transition rule to not be subject to the employer mandate until the first day of your plan year that begins in 2015 (rather than on January 1, 2015).

10 What should an employer do to comply with the employer mandate?

(1) Determine whether it is subject to the employer mandate (i.e., the 50 (100 for 2015) or more full-time (and full-time equivalent) employee calculation).

(2) If your company is subject to the employer mandate, determine whether it will "pay or play" (i.e., whether to offer minimum essential coverage (or not, and pay 1st penalty), and if offering coverage, whether the coverage will be affordable and provide minimum value (or not, with exposure to 2nd penalty)).

(3) Do not delay. If your company is subject to the employer mandate, you need to evaluate your coverage offerings and determine full-time employees and your exposure to penalities. You also need to be prepared for the detailed monthly reporting and disclosure requirements that begin for 2015 (and are due in early 2016). Proper monitoring of hours of service for all employees is key.

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