

Employer Responsibility

New incentives for employer responsibility take effect in 2014

The health care law does not require employers to provide health insurance for their employees. However, employers with 50 or more full-time employees that do not offer insurance, offer insurance that is unaffordable, or offer coverage that does not meet a minimum value standard will be subject to fees beginning January 1, 2014.

If an employer with 50 or more full-time equivalent employees does not offer affordable health insurance for those employees, and any of its employees receive premium tax credits or cost-sharing reduction payments because coverage is unaffordable or inadequate, the employer will be liable for a fee for each month in which it fails to offer minimum essential coverage.

- Learn how to determine the number of full-time equivalent (FTE) employees to determine compliance with the employer responsibility obligation under the health care law by visiting <http://www.healthlawguideforbusiness.org/fte-calculator>.

Employers offering coverage will only be assessed fees if an employee receives a subsidy to purchase health insurance through Covered California, the state's health insurance marketplace, and:

- The health coverage offered by the employer does not cover 60% of typical enrollee expenses, or
- Any individual employee must pay more than 9.5% of W2 income for their employer coverage.

Exceptions

If an employer offers coverage to all but five percent of its employees or five full-time employees (whichever is greater) during any month, the employer will not be penalized for failing to offer coverage, even if those employees receive premium tax credits or cost-sharing subsidies. This exception does not apply to the minimum value or affordability requirements for coverage offered by employers. An employer will still be liable if any of its employees receive premium tax credits because coverage is unaffordable or inadequate.

Dependent Coverage

The IRS has also proposed new regulations to clarify requirements for employer plans to offer coverage to a qualifying employee's dependents, defined as children under the age of 26. While employers with 50 or more full-time employees that do not offer health insurance to employees and their dependents will be subject to fees beginning in 2014, they will not be required to subsidize health insurance plans for employees' dependents. Additionally, unlike individual employee plans, if the coverage for the employees' dependents is unaffordable, the employer will not be subject to fees.

The IRS will grant a one-time reprieve to employers who fail to offer coverage to full-time employees' dependents as long as the employer takes steps in 2014 to come into compliance with the law.

Fees for not meeting the coverage requirement

If an employer does not offer coverage and at least one employee receives a subsidy in Covered California's Individual Marketplace, the fee is \$2,000 annually multiplied by the number of full-time employees, excluding the first 30 employees.

If an employer offers coverage but the insurance plan offered is deemed inadequate or unaffordable, employees can choose to buy coverage in Covered California's Individual Marketplace and receive a premium tax credit or cost-sharing subsidy. The fee to the employer is \$3,000 annually for each full-time employee receiving the credit, up to a maximum of \$2,000 multiplied by the number of full-time employees, excluding the first 30 employees. (This is the same as the maximum for employers who do not offer coverage).

- An insurance plan is deemed "inadequate" if it does not pay at least 60 percent of health care expenses for a typical population, as defined by the IRS.
- An insurance plan is deemed "unaffordable" if employees have to pay more than 9.5 percent of family income to purchase it.
- Fees are increased each year by an amount equal to the growth in insurance premiums.

Assessing Fees

- If an employee declines affordable and adequate coverage offered by their employer, the employee is not eligible for premium tax credits or cost-sharing subsidies through California's health insurance marketplace, Covered California. If an employee fails to pay their individual share of their coverage premium, the employer has no further obligation after a 30-day grace period.
- Employers will receive notice from the IRS if their employees are certified for premium tax credits and will have an opportunity to respond to the notice. The IRS will then present the employer with another notice and a demand for payment. This process will begin in 2015 for fees owed for 2014.

Proposed Rules to Determine Full-time Equivalent (FTE) Employees

The IRS has proposed a new regulation to clarify how employers can determine the number of full-time equivalent (FTE) employees to determine if they are in compliance with the employer responsibility obligation under the health care law.

A full-time employee is defined as an employee who is employed an average of at least 30 hours of per week. The proposed rule states that a FTE employee working 130 hours in a calendar month satisfies the 30 hours of work per week requirement. The proposal prescribes three different methods to determine whether a non-hourly employee qualifies:

1. Counting actual hours of service.
2. Using a days-worked equivalency, in which eight hours of service counts as a day.
3. Using a weeks-worked equivalency, in which 40 hours of service per week counts as a week.

Employers can apply the methods to different classifications of non-hourly employees, as long as it is done consistently and does not understate their hours in service so as to disqualify them from health coverage. New hires will be under a 12-week grace period before their status is reviewed under a look-back formula.

More information is available from the IRS at <http://www.regulations.gov>.