Summary of Potential Employer Penalties Under PPACA (P.L. 111-148)

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This report provides a description and illustrations of the penalties, when applicable beginning in 2014, to employers under the new health insurance reform law—specifically, in §1513 and §10106 of the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148), as amended by §1003 of the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). Hereafter, PPACA will refer to PPACA as amended by the reconciliation act.

PPACA does not explicitly mandate an employer to offer employees acceptable health insurance. However, certain employers with at least 50 full-time equivalents will face penalties, beginning in 2014, if one or more of their full-time employees obtains a premium credit through an exchange.[1] As described in greater detail below, an individual may be eligible for a premium credit either because the employer does not offer coverage or the employer offers coverage that is not "affordable."

Application Only to "Large Employers"

To be subject to these penalties regarding employer-sponsored health insurance, an employer must be a "large employer," defined as having "at least 50 full-time employees during the preceding calendar year."[2] "Full-time employees" are defined as those working 30 or more hours per week.[3] The number of full-time employees excludes those full-time seasonal employees who work for less than 120 days during the year.[4]

The hours worked by part-time employees (i.e., those working less than 30 hours per week) are included in the calculation of a large employer, on a monthly basis. This is done by taking their total number of monthly hours worked divided by 120.

For example, a firm has 35 full-time employees (30+ hours). In addition, the firm has 20 part-time employees who all work 24 hours per week (96 hours per month). These part-time employees' hours would be treated as equivalent to 16 full-time employees, based on the following calculation:

20 employees x 96 hours / 120 = 1920 / 120 = 16

Thus, in this example, the firm would be considered a "large employer," based on a total full-time equivalent count of 51—that is, 35 full-time employees plus 16 full-time equivalents based on part-time hours. However, in terms of calculating potential penalties below, part-time hours and part-time employees are not included; only the actual 35 full-time employees would be counted.

[1] For more information about exchanges under PPACA, see CRS Report R40942, *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act* .

[2] Internal Revenue Code (IRC) §4980H(c)(2), as amended by §1513 and §10106 of PPACA, and as amended and renumbered by §1003 of P.L. 111-152.

[3] IRC §4980H(c)(4).

[4] IRC §4980H(c)(2)(B). In addition, an employer would not be considered a large employer if its number of full-time employees exceeded 50 for 120 days or less.

Potential Tax Penalties in 2014 on Large Employers

Regardless of whether or not a large employer offers coverage, it will be potentially liable for a penalty *only if* at least one of its full-time employees obtains coverage through an exchange and receives a premium credit. (For purposes of applying the penalty amounts discussed in the remainder of this report, a "full-time employee" is only those individuals working 30 hours per week or more. Part-time workers or full-time equivalents are not included in penalty calculations. An employer will not pay a penalty for any part-time workers, even if that employee receives a premium credit.)

Beginning in 2014, individuals who are *not* offered employer-sponsored coverage and who are not eligible for Medicaid or other programs may be eligible for premium credits for coverage through an exchange. These individuals will generally have income between 138% and 400% of the federal poverty level (FPL).

Individuals who *are* offered employer-sponsored coverage can only obtain premium credits for exchange coverage if, in addition to the other criteria above, they also are not *enrolled* in their employer's coverage, and their employer's coverage meets either of the following criteria: the individual's required contribution toward the plan premium would exceed 9.5% of their household income, or the plan pays for less than 60%, on average, of covered health care expenses.

In 2014, for example, if citizens whose income is below 138% FPL (that is, 133% FPL plus an extra 5% FPL that is to be disregarded from individuals' income when determining Medicaid eligibility) apply for premium credits through an exchange, they will be determined eligible for Medicaid and be enrolled in Medicaid rather than exchange coverage with premium credits. This could affect whether any of an employer's full-time employees obtain premium credits in an exchange—and if so, how many.

Large Employers Not Offering Coverage

A large employer will be subject to a penalty if any of its full-time employees receives a premium credit toward their exchange plan. In 2014, the *monthly* penalty assessed to employers who do not offer coverage will be equal to the number of full-time employees minus 30 multiplied by 1/12 of $2,000 for any applicable month. After 2014, the penalty payment amount would be indexed by a premium adjustment percentage for the calendar year.

Employers that do not offer coverage must also file a return stating that they do not offer coverage, the number of full-time employees, and other information required by the Secretary. They must provide notice to employees about the existence of the exchange, including a description of the services provided by the exchange.

Large Employers Offering Coverage

As previously mentioned, employers who do offer health coverage will *not* be treated as meeting the employer requirements if at least one full-time employee obtains a premium credit in an exchange plan because, in addition to meeting the other eligibility criteria for credits, the

employee's required contribution exceeds 9.5% of the employee's household income or if the plan offered by the employer pays for less than 60% of covered expenses.

In 2014, the *monthly* penalty assessed to the employer for each full-time employee who receives a premium credit will be 1/12 of $3,000 for any applicable month. However, the total penalty for an employer would be limited to the *total* number of the firm's full-time employees minus 30, multiplied by 1/12 of $2,000 for any applicable month. After 2014, the penalty amounts would be indexed by a premium adjustment percentage for the calendar year.

An employer must file a return providing the name of each individual for whom they provide the opportunity to enroll in coverage, the length of any waiting period, the number of months that coverage was available, the monthly premium for the lowest cost option, the plan's share of covered health care expenses paid for, the number of full-time employees, the number of months employees were covered, if any, and any other information required by the Secretary. The employer must provide notice to employees about the existence of the exchange, including a description of the services provided by the exchange.

Finally, those firms with more than 200 full-time employees that offer coverage must automatically enroll new full-time employees in a plan (and continue enrollment of current employees). Automatic enrollment programs will be required to include adequate notice and the opportunity for an employee to opt out.

Examples

Table 1 shows four types of large employers (columns A through D) based on which, if any, employer penalty applies. To correspond with the columns lettered in **Table 1**, assume the following scenarios in a large employer with 50 full-time employees (with the number unchanged throughout the year). **Table 1** shows calculations for penalties on an annual basis, rather than a monthly basis as described above.

Scenario A

The large employer does not offer coverage, but no full-time employees receive credits for exchange coverage. No penalty would be assessed.

Scenario B

The large employer does not offer coverage, and one or more full-time employees receive credits for exchange coverage. The number of full-time employees receiving the credit is not used in the penalty calculation for an employer not offering coverage. The penalty is simply the number of full-time employees minus 30, times $2,000 (assuming annual amounts). Thus the employer's annual penalty in 2014 would be (50-30) x $2,000, or $40,000.

Scenario C

The employer offers coverage and no full-time employees receive credits for exchange coverage. No penalty would be assessed.

Scenario D

The employer offers coverage, but one or more full-time employees receive credits for exchange coverage. The number of full-time employees receiving the credit *is* used in the penalty calculation for an employer that offers coverage. The penalty is the lesser of the following:

1. the number of full-time employees minus 30, multiplied by $2,000—or $40,000 for the employer with 50 full-time employees (i.e., 50 minus 30, multiplied by $2,000); or
2. the number of full-time employees who receive credits for exchange coverage, multiplied by $3,000.

Although the penalties are assessed on a monthly basis (with the dollar amounts above then divided by 12), this example uses annual amounts, assuming the number of affected employees is the same throughout the year.

If the employer with 50 full-time employees had 10 employees who received premium credits, then the potential annual penalty on the employer for those individuals would be $30,000. Because this is less than the overall limitation of $40,000, the employer penalty in this example would be $30,000.

However, if the employer with 50 full-time employees had 30 employees who received premium credits, then the potential annual penalty on the employer for those individuals would be $90,000. Because this exceeds the overall limitation of $40,000, the employer penalty in this example would be the overall limitation of $40,000.

Table 1. Potential Annual Penalties Beginning in 2014 for Large Employers

Applies to For-profit and Nonprofit Organizations

Not a large employer: Less than 50 full-time employees[a]	**Large employer: 50 or more full-time employees[a]**			
	Does not offer coverage		**Offers coverage**	
	A	**B**	**C**	**D**
	No full-time employees[b] receive credits for exchange coverage[c]	**1 or more full-time employees[b] receive credits for exchange coverage[c]**	**No full-time employees[b] receive credits for exchange coverage[c]**	**1 or more full-time employees[b] receive credits for exchange coverage[d]**
No penalty	No penalty	Number of full-time employees[b] minus 30 multiplied by $2,000	No penalty	Lesser of: Number of full-time employees[b] minus 30, multiplied by $2,000. Number of full-time employees[b] who receive credits for exchange coverage, multiplied by $3,000.

Source: CRS analysis of P.L. 111-148 and P.L. 111-152.

Notes: Under the health insurance reform law, penalties will be assessed on a monthly basis (with the penalty amounts divided by 12). To illustrate annual amounts, this table assumes that the number of full-time employees and the number of those full-time employees receiving credits through an exchange remains constant throughout the year. State and local governments (in their role as employers) will not be subject to these penalties.

a. For purposes of determining whether an employer is a "large employer," the number of full-time employees (i.e., those working 30 hours per week or more) is added to the number of full-time equivalents (calculated by taking the hours worked by part-time employees in a month divided by 120).

b. For purposes of applying the penalty amounts in this table, a full-time employee is an individual working 30 hours per week or more. Part-time workers or full-time equivalents are not included.

c. Beginning in 2014, individuals who are *not* offered employer-sponsored coverage and who are not eligible for Medicaid or other programs may be eligible for premium credits for coverage through an exchange. Credit-eligible individuals will generally have income between 138% and 400% of the federal poverty level (FPL). The 138% FPL is 133% FPL plus an extra 5% FPL that PPACA requires to be disregarded from individuals' income when determining Medicaid eligibility.

d. Individuals who *are* offered employer-sponsored coverage can only obtain premium credits for exchange coverage if they first meet the regular eligibility criteria for credits (e.g., they are not eligible for Medicaid or other programs, and generally have income between 138% and 400% FPL) and meet the following additional criteria: they are not enrolled in their employer's coverage, and their employer's coverage either (1) requires the individual to contribute toward the plan premium more than 9.5% of their household income, or (2) the plan pays for less than 60%, on average, of covered health care expenses.

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