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Health care reform does not require an employer to provide health insurance coverage to employees. However, beginning in 2014, larger employers may face a penalty if any full-time employee (FTE) goes to the Exchange and receives a premium tax credit or cost-sharing assistance (together, a subsidy) to purchase coverage and either the employer does not offer minimum essential coverage to FTEs and their dependents, or the coverage it does offer does not provide a minimum value or is unaffordable.

Who is a Large Employer?

Under the reform, a large employer is an employer who employs at least 50 FTEs. To determine 50 or more FTEs, employers will need to count part-time employees by dividing the aggregate number of hours worked for a month by 120. Employers also need to consider controlled group rules, as members of a controlled group will be treated as a single employer and all employees will be treated as employed by a single employer. If the employer's workforce exceeds 50 FTEs for 120 days or fewer during the calendar year, and the employees in excess of 50 employed during the 120-day period were seasonal workers, the employer would not be considered a large employer for this purpose.

Who is a Full-Time Employee?

An FTE is, for any month, an employee who is employed for an average of at least 30 hours of service per week. Through the end of 2014, employers may use safe harbor

methods to determine which employees constitute FTEs for these purposes (see our previous article discussing the safe harbor methods, including discussion on standard and initial measurement periods, stability periods and administrative periods).

What is a Subsidy?

If eligible, the government may subsidize either some of the premium costs or cost sharing for individuals. A premium tax credit is available to individuals with household income between 100%-400% of the Federal Poverty Level who are not eligible for minimum essential coverage or are eligible but have unaffordable or insufficient coverage through their employer. A cost-sharing subsidy is available to individuals between 100%-250% of the Federal Poverty Level who are not eligible for minimum essential coverage or are eligible but have unaffordable or insufficient coverage through their employer.

What is Minimum Essential Coverage?

The term "minimum essential coverage" means coverage under any of the following: (a) a government-sponsored program, including coverage under Medicare Part A, Medicaid, the CHIP program, and TRICARE; (b) an eligible employer-sponsored plan (does not include excepted benefits); (c) a health plan offered in the individual market; (d) a grandfathered health plan; or (e) other health benefits coverage (such as a State health benefits risk pool) as HHS recognizes.

What is Minimum Value and Unaffordable Coverage?

We are awaiting guidance on what constitutes minimum value, but we know that a plan that provides minimum value means that it covers at least 60% of total plan costs. The IRS has requested comments on 3 approaches to determining minimum value (minimum value calculator, safe harbor checklists and actuarial certification). Affordable coverage means that the employee cost for self-only coverage for the lowest level of coverage that provides a minimum value does not exceed 9.5% of household income. A safe harbor is available that permits employers to substitute W-2 wages for household income to determine affordability as long as coverage is offered to the employee and his or her dependents.

What are the penalties?

If the employer does not offer coverage, the penalty is \$2,000 (\$166.67/month) multiplied by the total number of FTEs in excess of 30. This penalty will be triggered by one FTE going to the Exchange and receiving a subsidy. The amount of the penalty will be adjusted for inflation after 2014.

If the employer offers coverage that does not provide a minimum value or is unaffordable, the amount of the penalty is the lesser of \$3,000 per year (\$250/month) per FTE receiving a subsidy through the Exchange or \$2,000 per year (\$166.67/month) per FTE in excess of 30. Below you will find a flowchart explaining the penalties.

