

in focus

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Health Care Reform: A Short Q&A on Employer Shared Responsibility***What is Shared Responsibility?***

Employers are not required to offer health coverage, but certain employers that do not offer “affordable” coverage may be subject to tax penalties. This tax penalty is referred to as “Shared Responsibility” under the Internal Revenue Code. Shared Responsibility is scheduled to take effect January 1, 2014.

Who has Shared Responsibility?

Employers with 50 or more full-time employees (or full-time equivalents) may have Shared Responsibility obligations if they do not offer a health plan with “affordable” coverage. Affordable health coverage is coverage where the employee’s premium payment to the plan does not exceed 9.5% of his household income and the plan generally pays more than 60% of health expenses.

Employers with fewer than 50 full-time employees are exempt from the Shared Responsibility requirements.

What is the Shared Responsibility of employers that do not offer health coverage?

If an employer does not offer any health coverage to its full-time employees and any of its full-time employees receives a cost-sharing reduction or premium tax credit (See “What is a cost-sharing reduction?” and “What is premium tax credit?” below), the employer must pay a tax for every month that any of its full-time employees receives a cost-sharing reduction or premium tax credit. The employer’s Shared Responsibility tax is determined on a monthly basis and based on the number of full-time employees that the employer has. The amount of the tax for the month is equal to \$2,000 multiplied by one-twelfth multiplied by the total number of full-time employees employed by the employer for the month that exceed 30.

If an employer does not offer any health coverage but none of its employees receives a cost-sharing reduction or premium tax credit, then the employer does not have any Shared Responsibility tax liability.

Employers that do not offer health coverage must file with the IRS a statement that they do not offer health coverage.

What is the Shared Responsibility of employers that do offer health coverage?

If the employer offers health coverage to its full-time employees and any of its full-time employees receive a cost-sharing reduction or premium tax credit, the employer must pay a tax for every month that any of its full-time employees receives the reduction or credit.

The tax is equal to \$250 multiplied by the number of full-time employees who received a cost-sharing reduction or premium tax credit for the month. This tax is capped out each month at a maximum tax of \$2,000 multiplied by one-twelfth multiplied by the total number of full-time employees that exceed 30 for that month (*i.e.*, the amount the employer would have paid if it had offered no coverage at all).

The difference in tax between the employer that offers coverage to its full-time employees and the employer that does not is that the penalty for the employer that does not offer coverage is calculated based on all full-time employees that exceed 30. The penalty for the employer that offers coverage is calculated based only the employees who actually receive a cost-sharing reduction or premium tax credit.

What is a cost-sharing reduction?

A cost-sharing reduction is essentially a reduction in the individual's out-of-pocket limits under a health plan. Generally, an individual is eligible for a cost-sharing reduction if his household income is less than 400% of the federal poverty line (FPL) and he is enrolled in silver level coverage in an individual health plan through a state health insurance exchange (*i.e.*, a plan that provides coverage for 70 percent of health expenses).

What is a premium tax credit?

A premium tax credit is a tax credit to offset the cost of an individual's health insurance premiums. Generally, an individual is eligible for a premium tax credit if his household income is less than 400% of the FPL and the individual enrolled in a health plan through a state health insurance exchange. Individuals whose employers offer health coverage are eligible for a premium tax credit only if the employer's coverage is not "affordable" and the individual is not enrolled in the employer's plan. Health coverage is not affordable if the employee's premium payment would exceed 9.5% of his household income or the plan generally pays less than 60% of health expenses.

Note that, generally, beginning in 2014 those with a household income of less than 133% of FPL may enroll in Medicaid. Individuals enrolled in Medicaid are not eligible to receive the premium tax credit or cost-sharing reduction and would therefore not trigger Shared Responsibility requirements.

What Does It Mean to Employ 50 or More Full-Time Employees?

An employer is considered to employ at least 50 full-time employees for the calendar year if it employed an average of at least 50 full-time employees during the previous calendar year. In the determination of whether an employer employs at least 50 full-time employees, seasonal workers who are employed for 120 or fewer days during the year are excluded.

The employees of companies in the employer's controlled group are counted for purposes of determining how many full-time employees the employer has.

Employees who are not classified as full-time are combined and counted toward the full-time employee calculation. The monthly hours of service of non-full time employees are totaled and divided by 120.

The IRS has issued [proposed regulations](#) providing greater detail on the calculation of full-time employee status for purposes of determining whether an employer employs at least 50 full-time employees and who constitutes a full-time employee for purposes of the health coverage requirements and calculating the Shared Responsibility tax liability.

Examples

The following examples illustrate the new Shared Responsibility requirements:

Company A does not offer health coverage to its 1,500 full-time employees. Employee Joe obtains insurance on the individual market through his state's exchange for the last 10 months of the year and he is eligible for, and receives, a premium tax credit. As a result, Company A is subject to a tax of \$2,450,000 (*i.e.*, 10 months x \$2,000/12 x 1,470 employees).

Company B offers health coverage to its 1,500 full-time employees. Employee Jake is the only employee who declines employer coverage and obtains insurance on the individual market through his state's exchange. Jake is eligible for, and receives, a premium tax credit for the 12 months in 2014. As a result, Company B is subject to a tax of \$3,000 (*i.e.*, 12 months x \$250 x 1 employee).

Company C offers health coverage to its 90 full-time employees. Forty-five of the employees are eligible for and receive a premium tax credit for the month. As a result, Company C is subject to a tax of \$11,250 (*i.e.*, 1 month x \$250 x 45 employees), but the tax is capped at \$10,000 (*i.e.*, 2,000/12 x (90 - 30 employees))

Company D has 40 full-time employees, and 21 part-time employees who each work 85 hours per month. Thus, Company D has 54.875 full-time employees for purposes of the Shared Responsibility requirements (*i.e.*, 40 full-time employees + 21 part-time employees x 85 hours / 120 hours).

The proposed regulations contain guidance on a number of questions, including how to treat seasonal, foreign, and variable hour employees, how to determine household income for purposes of health coverage affordability, and how to determine whether an employee has been properly offered health coverage. The proposed regulations also include transition relief that allows employees to change a salary reduction election under certain cafeteria plans.

For more information about your Shared Responsibility under the Affordable Care Act, please contact:

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