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## *HEALTH CARE REFORM*

# Employers must play or pay under health care reform

by Timothy J. Snyder

*Health care reform is now law, and for most employers, many of the so-called "insurance market reforms" go into effect January 1, 2011. However, the portion of the law requiring certain large employers to offer and contribute to employees' health insurance or pay a penalty are deferred until 2014.*

### *The price of nonparticipation*

Under the law, effective January 1, 2014, each applicable large employer must offer minimum essential coverage to its full-time employees and their dependents. Employers that fail to do so will be fined for each month that any of its full-time employees purchases health insurance through a state health insurance exchange and receives a tax credit or cost-sharing reduction (generally granted to individuals based on income).

An "applicable large employer" is one that employed an average of at least 50 full-time employees during the preceding calendar year. A "full-time employee" works an average of at least 30 hours per week in any given month. Employees working less than 30 hours per week are counted as proportionate employees based on 30 hours per week.

**No minimum essential coverage.** If an applicable large employer fails to offer its full-time employees and their dependents the opportunity to enroll in at least minimum essential coverage and at least one full-time employee enrolls in health insurance coverage purchased through an exchange and receives a premium tax credit or cost-sharing reduction, the employer must pay a monthly penalty. The penalty is a nondeductible excise tax equal to the number of full- time employees over 30 (regardless of how many employees are receiving a premium tax credit or cost-sharing reduction) multiplied by one-twelfth of $2,000 ($166.67).

**With minimum essential coverage.** An applicable large employer that offers minimum essential coverage but has at least one full- time employee receiving a premium tax credit or cost-sharing reduction is subject to a different penalty. The penalty is an excise tax imposed for each employee receiving a premium tax credit or cost-sharing reduction for health insurance purchased through an exchange.

For each full-time employee receiving a premium tax credit or cost-sharing subsidy through an exchange for any month, the employer is fined one-twelfth of $3,000. The penalty for any month is capped at an amount equal to the number of full-time employees during the month (regardless of how many employees are receiving a premium tax credit or cost-sharing reduction) in excess of 30, multiplied by $166.67.

**Vouchers relieve penalties.** Employers offering minimum essential coverage and paying a portion of the coverage must also provide qualified employees with a voucher that can be applied to the purchase of coverage through an exchange. "Qualified employees" are defined as employees:

- who don't participate in the employer's health plan;
- whose required contribution for employer-sponsored minimum essential coverage is more than eight but less than 9.8 percent of their household income; and
- whose total household income is less than 400 percent over the poverty line.

The value of the voucher is equal to the amount of the employer contribution to the employer-offered health plan. Employers providing "free choice" vouchers aren't subject to the two penalties outlined above for employees who receive a voucher.

## *Bottom line*

Many courts have said that the Employee Retirement Income Security Act does not require an employer to provide employee benefits to its employees. That may still be the case post-health care reform, but employers will now be required to pay for the privilege of not providing medical benefits. Stay tuned, though, because between now and 2014, there will be both a congressional and presidential election. With many politicians vowing to repeal health care reform, it remains unknown whether large employers will be required to satisfy these mandates.

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