



# Benefit Trends

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## Health Care Reform – Special Edition

### Health Care Reform: 2014

#### The Risk and Reward of Excise Taxes

#### LEGISLATIVE BRIEF

August 6, 2010

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Although 2014 seems like a long time away, many employers are asking about the long term view and their risk of non-compliance with the major provisions of the Health Care Reform Law (HCR) in 2014. The purpose of this briefing is to discuss the 2014 shared responsibility requirements for employers with at least 50 employees, potential excise taxes, and how to calculate them.

#### In Brief

Employers with 50 or more employees must offer qualifying group health coverage to employees who work an average of 30 hours per week (full time employment.) Employers must provide the coverage within 90 days of hire. At present, HCR does not mandate coverage for employees working less than 30 hours per week or working on a seasonal basis. These rules become effective on January 1, 2014. Please note that the effective date is not tied to the first day of the new plan year.

#### The Basic Rules Regarding Employers' Shared Responsibility

As you know, the HCR law contains numerous other employer obligations with penalties attached. This discussion is limited to the employer's obligation to provide group health plan coverage to employees.

1. **Employers Subject to the Rule.** Employers who employed 50 or more full time employees (FTE) (including full time equivalents) on average in the previous year. All employers, including public agencies, churches, and non-profits, must comply by purchasing group health insurance coverage or by establishing and maintaining a self-funded health plan.

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2. **Counting Employees.** For purposes of counting FTEs, the employer must take into consideration two known guidelines:
  - FTEs are employees employed an average of 30 hours per week.
  - To determine how many employees an employer has, the employer must apply the controlled group and affiliated service group rules under Internal Revenue Code Section 414.
3. **The Mandate.** The plan offered must meet the plan design requirements specified by HCR as the minimum essential benefits. At present, this term is loosely defined but, in essence, is fairly comprehensive. Additionally, it must be affordable.
4. **Affordable Coverage.** For coverage to be considered affordable, it must meet these standards:
  - Employee contributions cannot exceed 9.5% of household income; and,
  - Benefit must be at least 60% of the actuarial value of the plan's total allowed costs.
5. **Penalty Applies If:**
  - The employer offers no qualifying group health plan; **or**,
  - The employer offers a group health plan that is unaffordable;

**and,**

The employer has at least one employee who enrolls in the Exchange and qualifies for a premium tax reduction or cost sharing reduction (premium reduction). To qualify for a premium reduction, the employee's household income must be less than 400% of the indexed federal poverty level (2009: Single, \$ 43,320; Family, \$ 88,200).

### Calculating the Penalty

1. **How to Calculate the Penalty for Employers Who Fail to Provide a Group Health Care Plan.** The penalty is a non-deductible excise tax which will accrue monthly for each month of non-compliance at a rate of \$166.67 times the total number of FTEs (minus 30) equaling a penalty of \$ 2,000 per FTE per annum. Although not expressly stated in the law, we assume the countable FTEs will include all FTEs of the employer (even those who have been employed less than 90 days). We expect regulations will address this issue. For purposes of this Calculator, we assume the penalty will apply to all full time employees (minus 30).
2. **How to Calculate the Penalty for Employers Who Do Offer Coverage But It is Not Affordable.** The penalty is a non-deductible excise tax which will accrue monthly for each month of non-compliance at the lesser of:
  - Total number of FTEs receiving premium reduction times \$ 250 per month (\$ 3,000 annually); or,
  - Total number of FTEs times \$166.67 per month (\$ 2,000 annually).
3. **Free Choice Vouchers.** For employers who offer coverage meeting the minimum essential coverage requirements, the penalty under the *How to Calculate the Penalty for Failure to Offer Affordable Coverage* section above will not apply with regard to all eligible employees to whom the employer provides a free choice monthly voucher.

- **The Voucher.** The voucher amount must equal the employer contribution for coverage (based on employee status (single or family) in the amount which is the highest percentage of employer contribution to total premium among all health coverage options offered by the employer. The employee waives coverage under the employer plan and then purchases coverage from the Exchange. The employer pays the voucher amount to the Exchange on behalf of that employee, with the employee to make up the difference in premium, if any. If the employer voucher amount exceeds the premium, the excess amount becomes taxable income to the employee.
- **Employees Eligible for the Voucher.** An eligible employee, for purposes of the voucher, is an employee whose required contribution is between 8% and 9.8% of the employee's household income which does not exceed 400% of the poverty level. Note that the percentages are to be indexed after 2014.

### Action Plan

**Step One.** Calculate the total number of FTEs (and FTE equivalents) employed at least 50% of the business days in the prior year.

**Step Two.** Measure the risk of having individuals who might qualify for a premium tax credit or cost-sharing reduction in the current year, were this 2014.

- **Household Income.** Although you will not necessarily know the employee's household income for 2010, you do know who is single and who is married and their annual rate of pay. Identify individuals who are single, whose income will not exceed \$ 43,320 in 2010. Identify individuals who are married, whose income will not exceed \$ 88,200 (without regard to dual income potential.) It's important to note that anyone applying for a premium tax credit or cost-sharing reduction must provide that information to the Exchange. For purposes of compliance, I recommend that you base the risk on the current or prospective W-2 wages you will pay in 2010.
- **Employee Contributions.** Again, using payroll data, determine whether the employee contribution (by tier) does not exceed 9.5% of W-2 wages without regard to dual income (for purposes of a conservative approach.) If it does, the penalties apply.
- **Plan Design.** Although plan design is not important if you choose not to offer coverage to your entire workforce, it is important if you offer coverage to one class or more but not all classes of employees. With respect to that class, you must determine if you are offering a plan that meets the minimum essential coverage requirement. If not, then penalties will apply.

**Step Three.** Take the total number of FTEs without regard to whether they have elected coverage, minus the number of employees who have waived coverage validly and then subtract 30. FTEs:

\_\_\_ Qualified FTEs



**Step Four:**

1. If you intend to offer no coverage in 2014, then multiply the final number in **Step Three** by \$166.67 times the number of months you will not offer coverage:

$$\underline{\hspace{1cm}} \text{ Qualified FTEs } \times \$166.67 \times 12 \text{ mos. } = \$ \underline{\hspace{1cm}} \text{ Excise Tax}$$

2. If you intend to offer minimum essential coverage in 2014, but it will be unaffordable, then multiply the number of qualified FTEs who receive the premium reduction by \$ 250 times the number of months you will not offer affordable coverage:

$$\underline{\hspace{1cm}} \text{ Qualified FTEs } \times \$ 250 \times 12 \text{ mos. } = \$ \underline{\hspace{1cm}} \text{ Excise Tax}$$

**Penalty:** You would pay the lesser of the excise tax specified in Step 4.1 and 4.2.

**Step Five.** If you intend to offer coverage and free choice vouchers in 2014, then take the answer from **Step Four, Part 2** above and subtract the total amount from that answer:

$$\$ \underline{\hspace{1cm}} \text{ Excise Tax } - (\$ 250 \times \underline{\hspace{1cm}} \text{ Vouchers}) \times 12 \text{ mos. } = \$ \underline{\hspace{1cm}} \text{ Net Excise Tax}$$

**Commentary**

From our perspective, the remaining essential but uncertain factors in determining a course of action include the following:

1. The premium requirements for minimum essential benefit plan designs as of 2014.
2. The final benefit design requirements to be included in the minimum essential benefit plan.
3. Any statutory change with regard to coverage obligation for employees working less than 30 hours per week.
4. The pressures from an employee retention perspective by industry, locale, etc.
5. The complete absence of regulatory guidance regarding the Exchange, pricing, etc.

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