

## The Affordable Care Act's Employer Shared Responsibility Provisions: A Brief Overview

The Affordable Care Act contains many provisions that will affect insurance and health care in America. Perhaps the most important of these provisions for employers is the "Employer Shared Responsibility" provisions. Under Employer Shared Responsibility, employers may be subject to a tax penalty if they fail to offer health insurance coverage to all of their full-time employees. While the inner workings of Employer Shared Responsibility are extremely complex, and employers must consult with their attorney to determine possible liabilities and solutions for compliance, we have provided below a brief overview that will shed light on the two (2) biggest questions most employers have regarding Employer Shared Responsibility.

### WHO HAS EMPLOYER SHARED RESPONSIBILITY?

Employer Shared Responsibility generally applies to employers that have fifty (50) or more full-time employees. The Affordable Care Act defines "full-time" as working, on average, thirty (30) or more hours per week. However, part-time employees are also considered when determining whether Employer Shared Responsibility applies to a particular employer. As such, even if an employer had no full-time employees, it could still be subject to a tax penalty under Employer Shared Responsibility if it failed to offer health insurance coverage to qualifying employees.

### WHAT ARE THE PENALTIES FOR EMPLOYER SHARED RESPONSIBILITY?

There are two (2) possible penalties for failing to offer proper health insurance coverage. The first penalty applies if an employer fails to offer health insurance coverage to every single full-time employee. In this case, the penalty is \$166.67 per month times the total number of full-time employees in excess of thirty (30). As such, if an employer has fifty (50) full-time employees and it fails to offer health insurance to one (1) employee, the employer is subject to a penalty of \$3,333 per month (20 times \$166.67).



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It is important to note that the employer's premium contributions are not considered when determining whether an *offer* of health insurance coverage is made. As such, allowing employees to enroll in health insurance and making them pay 100% of the premiums would mean the employer cannot be subject to the \$166.67 penalty.

The second penalty is \$250 per month times the number of employees that qualify for a Premium Tax Credit. To qualify for a Premium Tax Credit, an employee must (a) have a household income between 100% and 400% of the federal poverty line, (b) be required to pay premiums that are greater than 9.5% of household income through his or her employer's health insurance plan, and (c) purchase health coverage on the individual market through an insurance exchange.

As such, an employer can eliminate any Employer Shared Responsibility liability by offering health insurance to all of its full-time employees, so long as the annual premium cost to each employee is below 9.5% of that employee's annual income. Even if an employer does not offer such health insurance, it is possible that no penalty applies, as (a) some employees may obtain health insurance from a spouse's plan, (b) some may not apply for health insurance through an exchange, and (c) some will not meet the income requirements for a Premium Tax Credit.

#### TRANSITIONING INTO COMPLIANCE

Although the enforcement of the Employer Shared Responsibility provisions was delayed until January 1, 2015, employers were still required to send a notice of coverage to their employees by October 1, 2013. If an employer has not yet sent out the notice, this should be done immediately. The model notices can be downloaded from the Department of Labor's website using the following links:

[Model Notice for Employers Who Offer a Health Plan to Some or All Employees](#)

[Model Notice for Employers Who Do Not Offer a Health Plan](#)

Additionally, employers should work to identify (a) which employees are considered full-time and (b) review the health insurance coverage currently being provided to each such employee. That information will allow employers to work with their attorneys and health insurance provider to develop a comprehensive plan to address the potential liabilities under the Affordable Care Act's Employer Shared Responsibility provisions.

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