FAQ: The Affordable Care Act

Normal View

Employer Shared Responsibility - NEW EFFECTIVE DATE - Jan. 1, 2015

Originally scheduled for Jan. 1, 2014, the Employer Shared Responsibility provisions of the Affordable Care Act will now go into effect on Jan. 1, 2015. The White House announced the one-year postponement on July 2, 2013. NAHB fought for this delay to give businesses more time to adjust to the new rules.

In a letter to the Treasury Department, NAHB said "the employer community needs additional time to properly analyze their workforce and negotiate their plan designs. This is especially true for the small business community, which often lacks access to the human resources staff and technology available to larger businesses."

The delay will provide employers additional time to plan and to adapt their employee health coverage policies to meet the still-to-be determined requirements of the law. The final rules regarding implementation have yet to be published, and it may be six months or more before the new rules are promulgated by the U.S. Treasury Department and the Internal Revenue Service (IRS).

FAQs

Are employers required to offer their employees health insurance?

No, but large employers (50 employees or more) who do not offer health insurance coverage to their full-time employees will likely be subject to the shared responsibility penalty. To avoid the penalty, these employers must offer health insurance coverage to substantially all full-time employees (95% or more), but not part-time employees.

Which employers are subject to the shared responsibility provisions?

All employers who employ at least 50 full-time employees, or who employ an equivalent combination amounting to 50 full-time positions of full- and part-time employees, are subject to the shared responsibility provisions.

A full-time employee position is defined as 30 hours per week. **Employers with less than 50 full-time employees are not subject to the shared responsibility provisions.**

Will subcontractors be counted as employees?

No. Independent contractors are not employees, and are not to be considered in the determination of the 50 full-time employee threshold.

What about the individual mandate?

The Affordable Health Care Act mandates that effective Jan 1, 2014, all individuals and their dependents must either have health care coverage, qualify as exempt, or pay a penalty.

Beginning Oct. 1, every state and the District of Columbia will provide online health insurance marketplaces so individuals can shop for coverage and read about tax subsidies to reduce the cost of premiums for qualifying low- and medium-income individuals and households.

People with employer-provided health insurance, Medicare, Medicaid, other government-sponsored health insurance, or who have purchased their own qualifying health insurance policies comply with the mandate.

Exempt individuals include:

- Those in households in which total income is below the minimum for filing a federal tax return
- Those whose premiums exceed 8% of their household income
- Those who would have otherwise qualified for Medicaid coverage in states that did not expand their programs
- Prisoners
- Certain Native Americans
- Those with legitimate religious objections.

It's permissible go up to three consecutive months with no insurance coverage.

While the mandate takes effect in January, the initial enrollment period will extend to March 31 because of the three-month exemption. During that period, all non-exempt, uninsured individuals and their dependents must acquire health insurance coverage or pay a penalty to the Internal Revenue Service.

The penalty for the first year will be $95 per adult and $47.50 per child (or 1% of family income, whichever is greater). Penalties will increase in subsequent years.

What sort of notice is required from employers?

All businesses, regardless of size, will be **required to furnish a written notice** of health insurance options.

State and federal health insurance marketplaces created under the Affordable Care Act open on Oct. 1. These marketplaces are websites to allow individuals and businesses to shop for health insurance plans. To help employees with their insurance selection decisions, the Department of Labor (DOL) requires all employers*, regardless of size*, to furnish each employee with a written notice of health insurance options.

The exact timeline for furnishing these notices has not yet been established, but it may be prudent for employers to provide the notice on Tuesday, Oct. 1, to coincide with the date that the marketplaces first open. To assist employers, the federal Department of Labor has provided a model notice for employers who provide health insurance and another for employers who do not.

What is an Employer Shared Responsibility penalty?

It is a non-deductible excise tax that will be imposed after Jan. 1, 2015 on employers who do not offer affordable health care insurance with minimum coverage levels to full-time employees, and when at least one of their full-time employees receives a tax credit for purchasing coverage through an Affordable Insurance Exchange.

If one of my full-time employees declines my offered health insurance, and purchases coverage

through an Affordable Insurance Exchange, will I be subject to the employer shared responsibility tax?

No. As long as you offer qualifying affordable health insurance, you will not be subject to the tax penalty.

What is the amount of the tax for employers who do not offer health insurance?

The tax payment (or penalty) is $2,000 for each full-time employee, minus 30 employees. An example: the calculation for 50 full-time employees would be 50-30 = 20 x $2,000 = a penalty of $40,000).

What qualifies as an affordable health care plan with minimum coverage levels?

Under safe harbor provisions, offered health insurance coverage is affordable if the cost to the employee does not exceed 9.5% of the yearly wages paid to the employee by the employer. The minimum coverage level is met by offering a group health plan or group health insurance coverage that is either:

- A governmental plan
- Any other plan or coverage offered in the small or large group market within a state
- A grandfathered plan offered in the group market

I understand that a qualifying health insurance plan must also provide minimum value to avoid the penalty. What is "minimum value?"

A plan fails to provide "minimum value" if it pays for less than 60% of covered health care expenses. A minimum value calculator will be made available by both the IRS and the Department of Health and Human Services to assist employers in their calculations.

Is the health insurance plan that I currently offer to my full-time employees sufficient to avoid payment of the employer shared responsibility tax?

Most health insurance plans that existed on March 23, 2010 are eligible for grandfathered status, provided that the plan is not subsequently changed to:

- Significantly reduce benefits or coverage
- Raise co-insurance charges
- Significantly raise co-payment charges
- Significantly raise deductibles
- Significantly increase the employee's share of the premium
- Decrease annual payment limits, or impose new limits

Where can I get more detailed information?

The IRS Question and Answer page will be an excellent resource once it has been updated. NAHB will monitor the progress of the proposed regulations, and will add information to this FAQ when it becomes available concerning the implementation of the Affordable Care Act components. We will also post a more definitive FAQ when the final regulations are published.

View the NAHB-submitted comments on the act, and the additional comments made by NAHB as a member of the Coalition to Promote Independent Entrepreneurs.

For more information, email David Crump or Suzanne Beall at NAHB, or call David at 800-368-5242 x8491 or Suzanne at x8407.

This FAQ is intended to provide basic information to familiarize NAHB members with the requirements of the Affordable Care Act and the Employer Shared Responsibility provisions. It is not intended to be a complete or comprehensive treatment on the specific issues that are raised, and should not be regarded as such. This FAQ in no way constitutes an opinion of law, or tax advice. It is recommended that a qualified attorney or experienced Affordable Care Act professional review this information to determine how it may apply to your particular situation.

For more information about this item, please contact David Crump at 800-368-5242 x8491 or via email at dcrump@nahb.org.