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What are the potential penalties for employers?

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This last article of our three-part series "Whether to Play or Pay" focuses on helping large employers - 50 or more employees - calculate the penalties imposed by the Affordable Care Act.

Penalties apply if large employers do not offer health coverage to all of their full-time employees - and dependents - or the health coverage offered is not affordable or does not meet minimum value criteria, and one or more of their employees enrolls in subsidized health exchange coverage.

Employees are eligible for subsidies in the exchange if their household income is between 100 percent and 400 percent of the federal poverty level; for 2013 that is between $11,490 to $23,550 for a single-person household and $45,960 and $94,200 for a family of four.

Question 1: What is the penalty amount if a large employer does not offer health coverage to its full-time employees?

Answer: If an employer does not offer health plan coverage to each of its full-time employees - as defined by the act - and their dependents and one or more of its full-time employees enrolls in subsidized exchange coverage, the non-deductible penalty is $166.67 for each month that coverage is not offered - $2,000 per year - times the number of full-time employees in excess of 30. Thus, if an employer has 80 full-time employees, the penalty for not offering coverage to each of these employees for the entire year where only one full-time employee enrolls in subsidized exchange coverage would be $100,000 ((80 - 30) x $2,000).

The penalty is a nondeductible expenditure, while the cost of providing health coverage to its employees - and dependents - is deductible by the employer as a business expense. For an employer in a typical corporate tax income bracket, the real cost of the non-deductible penalty may be in the range of $3,300 per year.

Also, the employer's share of the cost of providing health insurance is not subject to employment taxes. In addition, an employer usually facilitates the payment of an employee's share of the health coverage premiums on a pre-tax basis, whereas the employee's purchase of exchange coverage will be with after-tax dollars.

In determining whether to offer health insurance, an employer must balance the true cost of the law's penalties, and the tax benefits and market competitive advantages to both the employer and its employees of employer-sponsored health benefits.

Question 2: What type of health coverage must a large employer offer to its full-time employees in order to avoid penalties under the ACA?

Answer: A large employer must offer coverage that is affordable and meets certain minimum value criteria. Coverage is affordable if the employee's portion of the self-only premium for the employer's lowest cost coverage option does not exceed 9.5 percent of the employee's household income with respect to those employees who are eligible for subsidized exchange coverage.

Employers will have to focus specifically on the cost of the employee premium paid by their lower-paid employees. Safe harbor provisions allow the employer to use the employee's wages reported in Box 1 of the W-2, the "rate of pay" or the federal poverty line as a proxy for the employee's household wages - information that is not readily available to the employer - to determine affordability.

Although use of the W-2 safe harbor would result in higher allowable employee premiums, it would be a "moving target" unknown until the year is over. Conversely, the use of the federal poverty line safe harbor would be static and predictable and would result in a lower premium than could otherwise be charged for most employees.

In selecting a safe harbor affordability baseline, employers should balance the administrative burden and relative economics associated with each option. A plan fails to provide minimum value if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of those costs. Most typical employer plans currently offer at least an 80 percent minimum value.

Question 3: What is the penalty amount if the coverage offered is not affordable or does not meet minimum value criteria?

Answer: If a large employer offers coverage but that coverage is not affordable or does not meet the minimum value criteria, the employer's nondeductible penalty is $250 for each month - $3,000 per year - for each full-time employee who actually enrolls in subsidized exchange coverage.

Question 4: How is the penalty amount calculated for an employer who is part of a controlled group?

Answer: Although large employer status is determined on an aggregated basis, each member is treated as a separate entity for purposes of determining liability for, and the amount of, any penalty. Thus, for example, an employer who is a member of a controlled group that does not offer coverage will be subject to a penalty based on the number of its own full-time employees and not on the number of full-time employees employed by the entire control group.
The 30-employee reduction - referred to in Question 1 - applies only once to a controlled group and is allocated ratably among the members of the group.

Question 5: What is the effective date for penalties for non-calendar year group health plans?

Answer: An employer that offers a non-calendar year group health plan is subject to the ACA's "play or pay" penalties beginning on the first day of the plan year that begins in 2014 as long as the plan was maintained on the fiscal year as of Dec. 27, 2012.

To learn more about health care reform and how it will impact your business, join us for a complimentary seminar on Thursday, Feb. 28. Seating is limited. Visit www.willcoxsavage.com for more information.

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