

# Health Reform Employer Coverage Mandate and Penalties

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[www.benefitcomply.com](http://www.benefitcomply.com)

[info@benefitcomply.com](mailto:info@benefitcomply.com)

The McCart Group

[www.mccart.com](http://www.mccart.com)

[benefits-insurance@mccart.com](mailto:benefits-insurance@mccart.com)

## Health Reform Employer Coverage Mandate and Penalties

*One of the key provisions of health reform legislation is the mandate that employers offer qualifying coverage to their full-time employees or face the possibility of paying a penalty. There is currently tremendous confusion about this requirement. This summary attempts to clarify the details of this provision and provides examples as to how the rules will affect different employers.*

### Overview

Beginning in 2014 an “applicable large employer” will pay a penalty if at least one of its full-time employees purchases coverage through an insurance exchange and qualifies for a premium tax credit or cost sharing reduction (referred to as a subsidy for the rest of this summary). For an employee to qualify for subsidized coverage, their household income must be less than 400% of the federal poverty level (FPL), and their employer must not offer “minimum essential coverage” or the coverage offered by the employer must be deemed “unaffordable”. These criteria are explained in more detail below. The penalty structure is significantly different for employers who do not offer coverage to all full-time employees than for those who offer coverage.

### Definition of Applicable Large Employer

To be subject to a penalty an employer must have at least 50 full-time employee equivalents during the preceding calendar year.

- Full-time employees are defined as those working 30 or more hours per week.
- Part-time employees are included on a pro-rated basis in the calculation to determine if an employer is an applicable large employer.
- The number of full-time employees excludes seasonal employees who work for less than 120 days during the year.

Note: While part-time employees are used to determine if an employer meets the 50 employee threshold, an employer is not required to provide coverage to part-time employees.

### Minimum Essential Coverage

The details of exactly what constitutes minimum essential coverage will be addressed in regulatory guidance, but the plan must include at least the following general categories of coverage:

- ambulatory patient services
- hospitalization and emergency services
- maternity and newborn care
- mental health and substance use disorder services
- prescription drugs, laboratory and rehabilitative services
- preventive, wellness services and chronic disease management
- pediatric services, including oral and vision care.

It is anticipated that most current employer sponsored health plans will qualify as minimum essential coverage.

### Employee Qualification for Subsidies

As stated in the overview, a penalty will only apply to an employer if at least one full-time employee qualifies for subsidized coverage and purchases coverage through the exchange. Individuals with an income between 138% and 400% of the federal poverty level (FPL) can qualify for subsidized coverage through an exchange. Those with incomes less than 138% of FPL will qualify for expanded Medicaid coverage.

For a full-time employee who meets the income qualifications to qualify for subsidized coverage, one of the following situations must exist:

- Their employer does not offer minimum essential coverage
- Their employer's plan pays for less than 60% of plan total covered health care expenses
- Their employer offers full-time employees minimum essential coverage but the required employee contribution exceeds 9.5% of their household income

## Employer Penalties

The employer penalty is determined by a formula that is different for employers who offer minimum essential coverage to all full-time employees from the penalty that applies to employers who do not offer coverage.

Employer penalty notes:

- The penalty for an employer offering coverage to all full-time employees is based only on the number of employees who actually purchase subsidized coverage through an exchange.
- The penalty for employers who do not offer coverage is based on all full-time employees (not counting the first 30).
- Penalties are calculated on a monthly basis
- The exchange is responsible for certifying if an employee is eligible for subsidized coverage
- After 2014 penalties are indexed to inflation

### Employers who offer minimum essential coverage to all full-time employees

The employer will pay a penalty of \$250 per month (\$3000 per year) for each employee who actually purchases coverage through an exchange and is certified by the exchange as qualifying for subsidized coverage.

### Employers who do not offer minimum essential coverage to all full-time employees

If at least one employee purchases coverage through an exchange and is certified by the exchange as qualifying for subsidized coverage, the employer will pay a penalty of \$166.67 per month (\$2000 per year) times the total number of full-time employees (not including the first 30 employees).

## Examples

Example 1 - An employer with 100 employees who offers minimum essential coverage to all full-time employees, but the employee contribution exceeds 9.5% of household income for some employees.

- Total plan premium S=\$350 mo. F=\$900 mo.
- Employee required contribution S=\$150 mo. F=\$400 mo.
- 5 employees qualify for subsidy and purchase coverage through an exchange
  - » 2 FT single employees earning \$18,000/yr (\$1500 mo income ÷ \$150 premium = 10% of income)
  - » 3 FT employees with families earning \$42,000/yr (\$3500 mo income ÷ \$400 premium = 11.4% of income)

Employer Monthly Penalty: 5 employees x \$250 = \$1250/mo

Example 2 – An employer with 100 employees who does not offer qualifying coverage to all full-time employees and at least one employee purchases coverage through an exchange and qualifies for subsidized coverage.

- The penalty does not apply to first 30 employees

Employer Monthly Penalty: 70 employees x \$166.67 = \$11,666.90/mo

## Summary

Some analysts are predicting that a number of employers not currently offering coverage to full-time employees will ultimately decide to pay the penalty rather than introduce an employer sponsored plan. There is also a possibility that some employers will attempt to increase their use of part-time employees to avoid or reduce the possible penalty.

Employers who currently define full-time employees as greater than the 30 hours per week defined in the law (i.e. 35 or 40 hours per week) will need to look closely at the difference between the penalty cost vs. the cost of changing their definition of full-time to conform to the law.

For employers who offer qualifying coverage to all full-time employees there is a significant unknown variable in trying to calculate the financial impact of the penalty. As stated earlier, the penalty applies only to individuals who qualify for subsidized coverage and purchase coverage through an exchange. The total number of employees who choose to do this will depend on a number of factors including;

- How many of any particular employers' employees have household incomes between 138% and 400% of FPL.
- The competitiveness of the individual plans offered in any given exchange. Since the exchanges are going to be state based, this could vary significantly from state to state.
- The employees understanding of their options.

Finally, a number of areas must be addressed in regulations expected to be released over the next few years, and it will be some time before the details of the state run insurance exchanges emerge. Employers will need to wait to make many of their final benefit design decisions until additional guidance is issued by regulatory agencies and the 2014 individual market begins to take shape.

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