Employee Benefits Series

Health Care Reform

Calculating "Pay or Play" Penalties

HF&C

Haylor, Freyer & Coon Inc.

Insuring All You Value

Calculating "Pay or Play" Penalties

The employer shared responsibility provisions under Health Care Reform (also known as "pay or play") apply to applicable large employers (ALEs)—generally those with **at least 50 full-time employees**, including full-time equivalent employees (FTEs). This worksheet provides step-by-step guidance for ALEs on the two methods for calculating "pay or play" penalties, based on whether the employer offers health coverage to certain employees.

The information and summaries provided in this worksheet are based on final rules issued by the IRS and are subject to change. General information regarding when a penalty may apply can be found beginning on page 4 of this worksheet. **Employers are strongly advised to consult with employment law counsel or a professional tax advisor for individualized guidance regarding compliance.**

EMPLOYERS NOT OFFERING COVERAGE

The penalty for an Applicable Large Employer (ALE) that does not offer coverage during the calendar year to at least 95% of its full-time employees and their dependents, where at least one full-time employee is certified to receive a premium tax credit, is calculated as follows:

Number of Full-Time Employees[1]
= ____________

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Minus 30
= ____________

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Multiplied by
$2,260 (for 2017)
$2,320 (for 2018)
Penalty[2] = $____________

[1] *Do not count full-time equivalent employees (FTEs) or employees in a limited non-penalty period (see page 4).*

[2] *For an employer offering coverage for some months but not others during the year, the payment is computed separately for each month for which coverage was not offered. The penalty for the month equals the number of full-time employees for the month (minus the allowable reduction) multiplied by 1/12 of $2,260 (for 2017) or $2,320 (for 2018).*

Example

Applicable Large Employer (ALE) employs 100 full-time employees in each calendar month of 2017 and does not provide an employer-sponsored health plan (no limited non-penalty periods apply). At least one of the ALE's full-time employees is certified to receive a premium tax credit. ALE is subject to a penalty equal to **70 x $2,260** (100 full-time employees minus 30, and then multiplied by $2,260) **= $158,200** for 2017.

EMPLOYERS OFFERING COVERAGE THAT IS NOT AFFORDABLE OR DOES NOT PROVIDE MINIMUM VALUE[3]

For an Applicable Large Employer (ALE) that offers coverage to at least 95% of its full-time employees and their dependents, but has one or more full-time employees who are certified to receive a premium tax credit, the penalty is computed separately for each month as follows:

Number of Full-Time Employees Receiving Premium Tax Credit or Cost-Sharing Reduction[4]
= ____________

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Multiplied by 1/12 of $3,390 (for 2017) $3,480 (for 2018)
= $____________

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Penalty = lesser of amount calculated or the amount that would be owed if employer did not offer coverage

[3] *An employer that offers affordable coverage that provides minimum value to less than 100% of full-time employees* ***may nevertheless owe a penalty*** *if an employee who is not offered coverage receives a premium tax credit or cost-sharing reduction.*

[4] *Do not count full-time equivalent employees, employees in a limited non-penalty period (see page 4), or employees who were offered the opportunity to enroll in coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors.*

Example

Applicable Large Employer (ALE) employs 100 full-time employees in each calendar month of 2017 and provides an employer-sponsored health plan to these employees (no limited non-penalty periods apply). Five full-time employees of ALE are certified to receive a premium tax credit during each month in 2017 because the coverage offered was unaffordable (the ALE did not meet the requirements for any affordability safe harbor). ALE is subject to a penalty equal to **5 x 1/12 of $3,390 = ($1,412.50) x 12 months = $16,950** (the lesser of $16,950 and $158,200) for 2017.

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GENERAL RULES & LIMITED NON-PENALTY PERIODS

General Rules

An employer that is subject to the pay or play requirements may be liable for a penalty if:

The employer does not offer health coverage or offers coverage to fewer than 95% of its full-time employees and their dependents, and at least one full-time employee receives a premium tax credit to purchase coverage on an Exchange (Marketplace)	**OR**	The employer offers coverage to at least 95% of its full-time employees and their dependents, but at least one full-time employee receives a premium tax credit, because that employee was not offered coverage or because the coverage was unaffordable to the employee or did not provide minimum value

Limited Non-Penalty Periods for Certain Employees

The pay or play rules also provide for limited periods during which an employer generally will not be subject to a penalty. The periods described below are limited non-penalty periods only if the employee is offered health coverage by the first day of the first month following the end of the period, and only if the health coverage that is offered at the end of the period provides minimum value.

First Year as ALE Period.	January through March of the first calendar year in which an employer is an ALE, but only for an employee who was not offered health coverage by the employer at any point during the prior calendar year.
Waiting Period under the Monthly Measurement Method.	If an ALE is using the monthly measurement method, the period beginning with the first full calendar month in which the employee is first otherwise (but for completion of the waiting period) eligible for an offer of health coverage and ending no later than two full calendar months after the end of that first calendar month.
Waiting Period under the Look-Back Measurement Method.	If an ALE is using the look-back measurement method and the employee is reasonably expected to be a full-time employee at his or her start date, the period beginning on the employee's start date and ending not later than the end of the employee's third full calendar month of employment.
Initial Measurement Period for New Variable, Seasonal & Part-Time Employees.	If an ALE is using the look-back measurement method, and the employee is a variable hour employee, seasonal employee, or part-time employee, the initial measurement period for that employee and the administrative period immediately following the end of that initial measurement period.
Period Following Change in Employment Status that Occurs During Initial Measurement Period.	If an ALE is using the look-back measurement method, and, as of the employee's start date, the employee is a variable hour employee, seasonal employee, or part-time employee that experiences a change to full-time employee status during the initial measurement period, the period beginning on the date of the employee's change in employment status and ending not later than the end of the third full calendar month following the change in employment status. (Note: This period may end sooner under certain conditions.)
First Partial Month of Employment.	If an employee's first day of employment is a day other than the first day of the calendar month, then the employee's first calendar month of employment is a limited non-penalty period.

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