



Beginning in 2014, the Patient Protection and Affordable Care Act (PPACA) imposes financial penalties on certain employers who don't offer health insurance coverage and on some employers who do offer coverage.

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Employer mandate penalties are based on a sequence of four questions.

Employers with 50 or more FTs or FTEs face possible penalties.

Temporary employees generally fall to the lessor, not the lessee.

Seasonals may count in determining size.

Multiple businesses with common ownership may be treated as one.

Large or small in 2014 depends in part on 2013 employment.

Access to individual health insurance exchanges is restricted.

Those whose income is too high can't receive subsidies.

Those whose income is too low cannot receive subsidies.

Those offered affordable, adequate coverage can't receive subsidies.

Employer Mandate Penalties Depend on Four Questions. (1) Is this employer "large" or "small"? (2) If the employer is large, does it offer qualified health insurance to substantially all full-time employees (FTs)? (3) How many, if any, FTs receive subsidies in the health insurance exchanges? (4) If the employer is large and has at least one subsidized FT, how much does it owe in annual penalties? The different calculations use different sets of data from varying subsets of employees.

For the mandate, a large employer is one where FTs and full-time equivalents (FTEs) sum to 50 or more. An FT is one who works 130 hours per month or more – roughly 30 hours per week. Each 120 hours per month of part-time and seasonal labor comprises one FTE.

In general, temporary employees do not count when determining whether an employer is large or small. In general, this provision of the law treats temps as employees of the business from whom they are leased (the lessor), and not from the business using the employees' services (the lessee). Similarly, independent contractors are, in general, not treated as employees. (There are some exceptions.)

For 2014, employers may apply a "good-faith" interpretation for seasonal workers. To determine employer size, seasonal worker hours are generally included in the FTE count. But if (1) a business is classified as large for 120 days or fewer or four months or less (consecutive or non-consecutive), and (2) seasonal workers are the sole reason for classifying a business as large, the business does not have to count their hours (the "seasonal worker exception").

If an owner or family is involved with several different businesses – related or unrelated – they may be treated as a "controlled group" or "affiliated services group." If so, the FTs and FTEs in the group will be added together and treated as if they were one business in determining whether the employee count is 50 or more. Defining a controlled group becomes vastly more complex and ambiguous when different owners hold varying percentage shares in a group of businesses.

In 2014, an employer's status as "large" or "small" will depend on employment levels during all or part of 2013. An employer with fewer than 50 employees in 2014 may find itself classified as large because of its employment patterns in 2013. For 2014, a business can determine whether it is "large" by determining whether it employed an average of at least 50 full-time employees on business days during any consecutive six-month period in 2013.

Are Any Employees Receiving Subsidies In The Individual Health Insurance Exchanges?

To qualify for subsidies in the individual insurance exchanges, several things must be true: (1) The FT's household income must fall within a certain range. (2) The employer does not offer the FT coverage; or, if it is offered, it is judged unaffordable or inadequate. (3) The FT must actively request subsidies from the exchange and reject the employer's coverage.

If an employee's household income is 400% of the federal poverty level (\$94,200 for a family of four in 2013) or higher, he or she cannot receive subsidies.

If an FT's household income is low enough to qualify for Medicaid or is below 100% of the Federal Poverty Level (\$23,550 for a family of 4 in 2013), he or she may not be eligible to purchase the commercial insurance or to receive subsidies toward the purchase of such insurance. The specifics in a given state depend on whether or not the state expanded Medicaid eligibility up to 138% of FPL.

"Affordable" means the employee's portion of the premium on the employer's lowest-cost employee only plan is less than 9.5% of the employee's W-2 income. "Adequate" means the plan covers, on average, at least 60% of healthcare expenses. This is referred to as meeting a minimum 60% actuarial value (AV). If the employer's offer fails either of these criteria for a FT employee in the relevant income range, that employee may seek subsidies. By definition, an employer who does not offer coverage is not offering affordable, adequate coverage.



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The employee has to seek subsidies.

Just because an employee qualifies for subsidies does not mean he or she gets them. The FT must actively apply to the exchange for subsidies. And if the employer offers coverage, the FT must actively decline that coverage.

Employees face a firewall.

If an FT's household income exceeds 400% of FPL, or if the employer offers affordable, adequate coverage, the employee is forbidden to leave the employer's plan and receive exchange subsidies. In some cases, this can mean that one employee pays a large amount for health insurance, while a co-worker earning slightly less can ask the government to pay most of his or her insurance costs.

There is a safe harbor provision for employers.

As written in the law, employee eligibility for subsidies and employer penalties were based on the employee's household income. Recognizing that employers have no access to information on employees' household income, subsequent regulations altered the test to make 9.5% of the employee's W-2 income the trigger for subsidies and affordability penalties.

Affordability standards apply to coverage of employees, not families.

The safe harbor provision described above raised doubts about dependents' access to exchanges and subsidies. The current proposed rule says that in order to avoid penalties, a large employer must offer affordable coverage to FTs and must offer coverage to FTs' dependents. However, the dependent coverage need not be affordable. If the dependent coverage is not affordable, the dependents may access the individual exchanges for coverage and subsidies. However, the rule substantially reduced the amount of subsidies available to dependents (up to age 26).

Penalties are calculated one way if you don't offer coverage.

How Much Are The Penalties? If an employer doesn't offer FTs insurance, and if at least one FT receives federal insurance subsidies in the individual exchange, the business will pay \$2,000 per FT (minus the first 30). Example: a business with 50 FTs, two of whom are subsidized, would pay \$40,000 = \$2,000 x (50 - 30).

They're calculated another way if you offer coverage that is unaffordable or inadequate.

If an employer offers insurance and at least one FT receives insurance subsidies, it pays the lesser of \$3,000 per subsidized FT OR \$2,000 per FT (minus the first 30). So an offering large employer with two subsidized FTs would be fined \$6,000. For a 50-employee employer with 14 or more subsidized FTs (above the tipping point for an employer of this size), the penalty would be \$40,000.

The calculations are complex.

[CribSheet 12-7](#) contains more detailed information on how to calculate the employer mandate penalties.

The mandate discourages business growth and job creation.

How Will The Employer Mandate Affect The Economy? The mandate makes it extremely expensive to cross the 50-employee threshold. For example, a midsized restaurant that goes from 49 to 50 employees will face a \$40,000 per year penalty. A business can avoid the penalties by firing employees, by not hiring new ones, by replacing full-timers with part-timers, or by outsourcing. Estimating the costs of hiring and expanding will be complex and confusing. In 2013, employers are already taking steps to reduce their employee counts below 50 and their part-timers' hours below 30 hours per week.

The mandate creates new red tape.

Businesses will spend considerable real resources determining how many employees they have with respect to the employer mandate. They will face time-consuming, arbitrary administrative burdens associated with employees seeking insurance subsidies in the new individual insurance exchanges.

The mandate will raise consumer prices.

The employer mandate will increase costs, and businesses will pass them along to consumers.

Professional advice is crucial!

What Is The Most Important Advice For Business Owners? CribSheets give general information. For actual business decisions, business owners should consult with attorneys, accountants, and brokers – frequently.