CribSheet 12-7 5/9/13

PPACA: Employer Mandate Penalty Calculations

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. This sheet explains how the penalties are calculated.

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

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 virtually 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.

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

In this context, a large employer is one where FTs and full-time equivalents (FTEs) sum to 50 or more. Again in this context, 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.

To avoid penalties, health insurance must be qualified (adequate).

The health insurance offered by employers must be "qualified," meaning that it meets requirements laid down by federal and state authorities. Among other things, qualified coverage must cover at least 60% of employees' healthcare costs on average. For small employers, policies must cover "essential health benefits," as defined by federal and/or state authorities.

Employees can get subsidies only if certain conditions are met.

For an FT to qualify for subsidies in the individual insurance exchanges, several things must be true: (1) The employee's household income must fall within a certain range. (2) The employer does not offer coverage that is judged qualified and affordable for this employee. (3) The employee must actively reject the employer's coverage and request subsidies from the exchange. Note: To avoid penalties, the employer must offer coverage to FT employees' dependents, but there is no requirement that their coverage be affordable.

Penalties are calculated one way for employers not offering qualified coverage.

If an employer doesn't offer FTs insurance (or offers non-qualified/inadequate coverage), and if at least one FT receives federal insurance subsidies in the 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 for employers offering qualified but unaffordable coverage.

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 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 employer mandate is highly complex.

The Employer Mandate Has Many Complexities. This cribsheet explains how to calculate the employer mandate penalties once you have answered the following questions: (1) How many FTs and FTEs does the employer have? (2) Does the employer offer qualified health insurance to employees? (3) How many FTs receive subsidies in the individual health insurance exchanges?

Employer mandate penalties depend on a large number of contingencies

A great number of factors are involved in answering the preceding three questions. Some of these are described in CribSheet #11-1 (PPACA: Employer Mandate Penalties). Among the complicating factors are: (1) Temporary or leased employees. (2) Seasonal employees. (3) Owners with interests in multiple businesses. (4) Look-back periods for determining the full-time status of employees. (5) Income restrictions on employees obtaining subsidies. (6) Individual vs. dependent coverage. (7) An employer safe harbor. (8) Employee share of premiums and subsidy eligibility. (9) Actuarial value of insurance offered.

NFIB and professional advice.

While NFIB can offer thoughts on the employer mandate and other PPACA-related issues, it is crucial that employers seek professional advice from qualified attorneys, accountants, and brokers

Please see Page 2 for **Observations from nine scenarios**.

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Observations from nine scenarios:

The table below shows employment data for nine hypothetical businesses.

Scenarios	#1	#2	#3	#4	#5	#6	#7	#8	#9
Total number of full-time employees (FTs)	49	50	50	50	51	51	52	51	31
Number of unsubsidized FTs	48	50	49	48	50	26	27	25	6
Number of subsidized FTs	1	0	1	2	1	25	25	26	25
Number of full-time equivalents (FTEs) = part-time hours in a month divided by 120	0	0	0	0	0	0	0	0	20
Penalty for a business that DOES provide health insurance	$0	$0	$3,000	$6,000	$3,000	$42,000	$44,000	$42,000	$2,000
Penalty for a business that DOES NOT provide health insurance	$0	$0	$40,000	$40,000	$42,000	$42,000	$44,000	$42,000	$2,000

#1: Unless the business has 50 or more full-time employees or FTEs, there are no penalties. ($0 with 49 employees, 1 of whom is subsidized)

#2: Unless the business has at least 1 subsidized employee, there are no penalties. ($0 with 50 employees, none of whom are subsidized)

#3 vs. #5: The mandate penalizes a non-providing firm $2,000 for creating an additional job. ($40K→$42K)

#3 vs. #4: The mandate DOES NOT penalize a non-providing firm for having more subsidized employees . ($40K in both cases)

#3 vs. #4: The mandate penalizes a providing firm with few subsidized employees $3,000 for each additional subsidized employee. ($3K→$6K)

#3 vs. #5: The mandate DOES NOT penalize a providing firm with few subsidized employees for creating an additional job – as long as the new employee is not subsidized. ($3K in both cases)

#6 vs. #7 vs. #8: A providing firm with many subsidized employees pays the same penalty as a non-providing firm of the same size.

#6 vs. #7: For a providing firm with many subsidized employees, the mandate penalizes the firm $2,000 for creating an additional job. ($42K→$44K)

#6 vs. #8: For a providing firm with many subsidized employees, the employer mandate DOES NOT penalize the firm for having more subsidized employees. ($42K in both cases)

#6 vs. #9: A firm can reduce its penalties tremendously by replacing full-time employees with part-timers. ($44K vs. $2K)

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