

## Weighing Affordable Care Act options

Before making a 'pay or play' decision, every business should determine whether the mandate applies



### HEALTH CARE COMMENTARY

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Effective Jan. 1, 2014, the Affordable Care Act (ACA) requires that all American citizens and legal residents purchase qualified health insurance either individually or through their employer. Individuals who do not

obtain insurance will be assessed a penalty. Certain employers, too, will be required to either make health insurance available to their employees or, similarly, pay a penalty.

In preparation for Jan. 1, many employers are already considering their options and determining whether it is more beneficial to them to "pay or play," that is, provide qualified health insurance to their employees or simply pay the penalty in lieu of insurance. Before making this decision, though, it is important to determine whether the "employer mandate" even applies to your business.

### FTEs are the key measure

The key to making this determination is to calculate how many full-time equivalents, or FTEs, you have. Only those employers with 50 or more FTEs are required to provide insurance.

It is important to note that a "full-time equivalent" is not the same as a "full-time employee." Instead, FTEs include a mix of full-time and part-time employees. Full-time employees are those who work 30 or more hours per week. Part-time employees, on the other hand, are not simply calculated as one-half of a full-time employee. Instead, the FTE is determined by aggregating the hours worked by all part-time employees in a month and dividing by 120 hours.

For example, let's assume Employer A has 70 employees, 40 of which are full time. The remaining 30 employees each work between 10 and 29 hours per week. To determine how many FTEs it has, Employer A aggregates the hours worked by its part-time employees in a month – in this case we'll assume 720 hours – and then divides that amount by 120. The result is that the 30 part-time employees constitute 6 FTEs. Adding this to the 40 full-time employees results in a total FTE of 46. Notice in this example that even though Employer A has 70 employees, it still does not meet the 50 FTE threshold for the employer mandate to apply.

### Fewer than 50 FTEs means no insurance requirement or penalty

If an employer has fewer than 50 FTEs, there is no requirement to provide employee health insurance nor is there a corresponding penalty. Such employers are free to provide employee health insurance if they wish to, but there is no requirement that they do so.

Congress, through the ACA, has sought to encourage small employers to provide employee health insurance by offering a tax

credit to those employers with fewer than 25 FTEs. This credit is available provided that the employer pays at least 50 percent of the employee's premium.

Employers with an FTE count between 25 and 49 are not eligible for the tax credit, but they are also not subject to the penalty.

### More than 50 FTEs puts the mandate in play

Employers with 50 or more FTEs must decide whether to provide a minimum level of health coverage to their employees or pay a penalty. When making the choice, employers should take into consideration that even though FTEs are used to calculate the applicability of the employer mandate, an employer subject to the mandate need provide health insurance only to its full-time employees. There is no requirement in the ACA to provide insurance to part-time employees.

### Penalty option applies only to 30 or more full-time employees

If an employer chooses the "penalty" option, it will be assessed a penalty of \$2,000 for each full-time employee over a threshold of 30. In other words, even though an employer may have more than 50 FTEs, if only 30 of those employees are full-time, the penalty will not apply.

### Insuring employees means plan must meet minimal essential coverage requirements

If an employer chooses to provide its employees with health insurance, then it must provide the "minimum essential coverage" required by the ACA. If the coverage provided is either inadequate or not affordable, the employer could face another penalty.

To ensure that "minimum essential coverage" is available, the ACA has required insurers to create plans providing health insurance plans at various tier levels (the so-called "metallic" plans: bronze, silver, gold and platinum). Employers can meet their obligations by purchasing insurance at any of the approved tier levels.

Small businesses with fewer than 100 employees will have the option of participating in the state-run SHOP Exchange, which provides similar coverage at the various tier levels.

### Consult professionals to ensure your decisions meet your needs

Whether to "pay or play" in 2014 is a determination that should be made in consultation with your tax advisor. In some circumstances, loss of the various tax deductions associated with providing employee health insurance may make paying the penalty a less attractive option than providing coverage.

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