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Employer and Individual Shared Responsibility Requirements

The Affordable Care Act (ACA) includes employer and individual shared responsibility requirements for health coverage. Under these rules:

- An applicable large employer will face penalties if it does not offer affordable, minimum value health coverage to its full-time employees (and their dependents) and one or more of its full-time employees receives a subsidy through an Exchange.
- Individuals must obtain coverage for themselves and their family members to avoid paying a tax penalty, subject to certain exemptions.

This ACA Overview summarizes the ACA's shared responsibility rules.

LINKS AND RESOURCES

The IRS has issued regulations and other guidance implementing the employer and individual shared responsibility requirements.

- Final Rule on individual mandate exemptions (July 1, 2013)
- Final Rule on the individual mandate (Aug. 30, 2013)
- Final Rule on the individual mandate (Nov. 26, 2014)
- IRS Questions and Answers on the individual mandate
- Final Rule on the employer mandate (Feb. 12, 2014)
- IRS Questions and Answers on the employer mandate

This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

EMPLOYER MANDATE

Beginning in 2015, ALEs must:

- Offer affordable, minimum value health coverage to their full-time employees (and dependents); or
- Pay a penalty if any of their full-time employees receives a subsidy toward an Exchange plan.

INDIVIDUAL MANDATE

Beginning in 2014, individuals must:

- Obtain acceptable health insurance coverage for themselves and their family members;
- Qualify for an exemption from the individual mandate; or
- Pay a penalty.

EFFECTIVE DATES

Employer Mandate

The employer shared responsibility rules took effect for most applicable large employers (ALEs) on **Jan. 1, 2015**. However:

- ALEs with non-calendar year plans may have qualified for a delay in penalties until the first day of the 2015 plan year.
- ALEs with fewer than 100 full-time and full-time equivalent (FTE) employees could qualify for an additional delay, if they met certain requirements. Relief from penalties for these employers is available for all of 2015 and any part of the 2015 plan year falling in 2016 (for certain non-calendar year plans).

Individual Mandate

The individual shared responsibility requirement took effect on **Jan. 1, 2014**. Individuals who are not exempt and who do not obtain the required health coverage for a tax year will owe a penalty on that year's tax return.

EMPLOYER SHARED RESPONSIBILITY REQUIREMENTS

Beginning in 2015, ALEs that do not offer affordable, minimum value health coverage to their full-time employees (and their dependents) will be subject to a penalty if any of their full-time employees receives a subsidy toward an Exchange plan.

Applicable large employer: an employer with, on average, at least 50 full-time employees, including FTE employees, during the preceding calendar year

Individuals who are not offered affordable, minimum value employer-sponsored coverage (and who are not eligible for Medicaid or other programs) may be eligible for premium tax credits for coverage through an Exchange. Generally, these individuals must have income that is between 138 and 400 percent of the federal poverty level (FPL). Some individuals who satisfy the requirements for receiving the premium tax credit may also qualify for cost-sharing reductions under Exchange plans. However, employees who enroll in their employers' plans cannot receive these Exchange subsidies, even if the coverage is not affordable or does not provide minimum value.

Penalty for Not Offering Coverage—The 4980H(a) Penalty

Section 4980H(a) of the tax code imposes a penalty on ALEs that do not offer coverage to substantially all full-time employees (and their dependents). The penalty is triggered only if a full-time employee receives an Exchange subsidy.

The monthly penalty amount is equal to the number of full-time employees (minus 30) multiplied by 1/12 of $2,000 (as adjusted) for any applicable month. For 2015, the dollar amount used in the calculation has been adjusted to $2,080. For 2016, it increased to $2,160.

Penalty for Offering Coverage—The 4980H(b) Penalty

ALEs that do offer coverage to substantially all full-time employees (and dependents) may still be subject to penalties under tax code Section 4980H(b). This penalty will apply if at least one full-time employee obtains a subsidy for an Exchange plan because:

- The ALE did not offer coverage to all full-time employees;
- The coverage offered by the ALE is "unaffordable;" or
- The coverage offered by the ALE does not provide "minimum value."

An ALE's health coverage is considered unaffordable if the employee's required contribution toward the plan premium for self-only coverage exceeds **9.5 percent** of his or her household income (as adjusted each year). The affordability percentage is adjusted to 9.56 percent for plan years beginning in 2015, 9.66 percent for 2016 and 9.69 percent for 2017. The ALE's health coverage will not provide minimum value if the plan pays for less than 60 percent, on average, of covered health expenses.

The monthly penalty assessed on an ALE for each full-time employee who receives a subsidy will be 1/12 of $3,000 (as adjusted) for any applicable month. For 2015, the dollar amount used in this calculation has been adjusted to $3,120. For 2016, it increased to $3,240. The total penalty would be limited to the Section 4980(a) penalty amount.

INDIVIDUAL SHARED RESPONSIBILITY PENALTIES

The ACA requires most individuals to obtain acceptable health insurance coverage for themselves and their family members, or pay a penalty. This rule took effect in 2014. Individuals may be eligible for an exemption from the penalty in certain circumstances.

Employees may satisfy the individual mandate by purchasing acceptable coverage through their workplace, an Exchange or the private individual market. If coverage is not purchased and the individual is not exempt, the individual penalty will be imposed.

Penalty Amount

The penalty for not obtaining health coverage was phased in over a three-year period, and is the *greater of two amounts*—the "flat dollar amount" and "percentage of income amount."

The penalty started at the greater of $95 per person or 1 percent of income for 2014. "Income" for this purpose is the taxpayer's household income minus the taxpayer's exemption (or exemptions for a

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married couple) and standard deductions. The penalty amount increased to $325 or up to 2 percent of income in 2015. In 2016 and thereafter, the penalty increased to $695 or up to 2.5 percent of income.

2014	$95 per person/1 percent of income
2015	$325 per person/2 percent of income
2016 and later years	$695 per person/2.5 percent of income

Families will pay half the penalty amount for children, up to a family cap of three times the annual flat dollar amount per year ($975 for 2015; $2,085 for 2016).

Also, the individual penalty is capped at the national average of the annual bronze plan premium. The monthly national average bronze plan premium for 2016 is **$2,676** per year (**$223** per month) for an individual and **$13,380** per year (**$1,115** per month) for a family with five or more members.

Exemptions

The ACA provides nine categories of individuals who are **exempt from the penalty**. An individual who is eligible for an exemption for **any one day** of a month is treated as being exempt for the entire month.

EXEMPTIONS FROM THE INDIVIDUAL MANDATE		
Individuals who cannot afford coverage	Taxpayers with income below the filing threshold	Members of federally recognized Indian tribes
Individuals who experience a hardship	Individuals who experience a short gap in coverage	Religious conscience objectors
Members of a health care sharing ministry	Incarcerated individuals	Individuals not lawfully present in the United States

Under the ACA, individuals who lack access to affordable health coverage are exempt from the individual mandate. For purposes of this exemption:

- Coverage is affordable for an employee if the required contribution for the lowest-cost, self-only coverage does not exceed **8 percent** of household income (as adjusted each year).
- For family members, coverage is affordable if the required contribution for the lowest-cost family coverage does not exceed **8 percent** of household income (as adjusted each year).

How is the Penalty Enforced?

Starting in 2015, individuals filing a tax return for the previous tax year will indicate which members of their family (including themselves) are exempt from the individual mandate. For family members who are not exempt, the taxpayer will indicate whether they had insurance coverage. For each non-exempt family member who doesn't have coverage, the taxpayer will owe a payment. Spouses who file a joint return are jointly liable for the penalties that apply to either or both of them. Any individual who is eligible to claim a dependent will be responsible for reporting and paying the penalty applicable to that dependent.

The IRS will generally assess and collect individual mandate penalties **in the same manner as taxes**. However, the ACA imposes certain limitations on the IRS' ability to collect the penalty. As a result, it is likely that any assessable penalty under the individual mandate will be subtracted from the tax refund that an individual is owed, if any.

PREMIUM TAX CREDITS FOR LOW-INCOME INDIVIDUALS

The ACA created a premium tax credit to help eligible individuals and families purchase health insurance through an Exchange. By reducing a taxpayer's out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable.

To be eligible for the premium tax credit, a taxpayer:

- Must have household income for the year between 100 and 400 percent of FPL for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.

In addition, to receive the premium assistance, a taxpayer must enroll in one or more qualified health plans through an Exchange. The taxpayer **cannot be eligible for minimum essential coverage** (such as coverage under a government-sponsored program or an affordable, minimum value eligible employer-sponsored plan).

To determine an individual's eligibility for a tax credit, employer-sponsored coverage is not considered affordable if the employee's cost for self-only coverage exceeds **9.5 percent** of the employee's household income for the tax year (as adjusted each year).

An employer-sponsored plan is considered affordable for related individuals (that is, family members) if the portion of the annual premium the employee must pay for self-only coverage does not exceed 9.5 percent of the taxpayer's household income (as adjusted). Thus, the affordability determination for families is based on the cost of self-only coverage, not family coverage.