

PPACA: EMPLOYER MANDATE PENALTIES

Beginning in 2014, the Patient Protection and Affordable Care Act (PPACA) will impose large financial penalties on certain employers who do not provide health insurance coverage and, in some cases, on employers who do provide coverage.

WHICH BUSINESSES FACE POTENTIAL PENALTIES?

Those with 50 or more full-timers or FTEs

Businesses with 50 or more full-time employees or full-time equivalents face potential employer mandate penalties. In this context, a full-time employee is one who works 120 hours per month or more. In counting toward 50, each 120 hours per month of part-time labor comprises an FTE.

Owners with multiple businesses totaling 50 or more full-timers or FTEs

If an owner has several different businesses, the full-timers and FTEs in those separate businesses *may* be added together to determine whether the employee count is 50 or more. The decision on whether to combine an owner's businesses in this way rests with the Internal Revenue Service.

HOW MUCH ARE THE PENALTIES?

If you don't provide coverage

If a business *does not* provide insurance *and* if one or more employees receive federal insurance subsidies, the business will pay \$2,000 per employee (minus the first 30). So a non-providing business with 50 employees, one of whom is subsidized, would pay \$40,000 = \$2,000 x (50 - 30).

If you do provide coverage

If a business *does* provide insurance, *and* if one or more employees receive insurance subsidies, the business will pay \$3,000 per *subsidized* employee *or* \$2,000 per employee (minus the first 30) – whichever is less. So a providing business with one subsidized employee would be fined \$3,000.

WHAT DETERMINES WHETHER AN EMPLOYEE QUALIFIES FOR SUBSIDIES?

PPACA's affordability standard

To qualify for subsidies, an employee must meet two criteria. First, his or her *household* income must be less than 400% of the federal poverty level (\$88,200 for a family of 4). Second, the employee's portion of their insurance premium must exceed 9.5% of household income.

HOW WILL THE EMPLOYER MANDATE AFFECT THE ECONOMY?

More red tape

Businesses will spend 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 insurance exchanges.

Disincentive to grow

The mandate makes it extremely expensive to cross the 50-employee threshold. For example, a mid-sized 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, or by outsourcing. Estimating the costs of hiring and expanding will be complex and confusing.

Threat to employees' families' privacy

Businesses subject to the employer mandate will receive monthly government reports on subsidized employees that inadvertently reveal personal financial data on employees' spouses and families. This raises discomfoting privacy concerns and exposure to liability for employers.

Employer fines triggered by factors irrelevant to the business and unknown to the owner

For some firms, the employer mandate will result in large fines when there are private changes in their employees' households. For example, an employee's spouse losing a job or an employee's spouse's elderly relative moving into their house could trigger thousands of dollars in annual penalties. Employers will not be entitled to know the details of what caused their penalty – unless they challenge the employee's honesty before a government agency.

Higher consumer prices

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

IS ANYTHING BEING DONE?

Federal lawsuit: NFIB plus 26 state governors and attorneys general

In a federal lawsuit, NFIB, 26 states, and 2 individuals asked that PPACA be declared unconstitutional on the basis of the law's individual mandate. A Florida District Court Judge agreed with NFIB and the other plaintiffs and ruled the entire law invalid. If higher courts sustain the judge's ruling, the entire law, including the employer mandate, will no longer be law.

H.R. 1744

Representatives Boustany, Tiberi, and Barrow introduced H.R. 1744, the American Job Protection Act, which would repeal the employer mandate.

S. 20

Senator Orrin Hatch introduced a similar bill to repeal the employer mandate. S.R. 20 is also entitled the American Job Protection Act