

**BLOGS**

Archives;Health Care

FOCUS ON BENEFITS: Health Care Reform is Constitutional What Do We Do Now?

You've heard a lot of buzz about the individual mandate, the tax, and the expansion of Medicaid. (If somehow you haven't heard enough, you can read the Supreme Court opinion [here](#).) And you'll be hearing plenty more about the political battle over the future of the health care reform law. We have no predictions about that. But whatever you hope will happen to health care reform politically, you know there are a lot of deadlines for the beginning of 2014. And you're wise enough to know you need to gear up for the laws requirements.

The constitutionality of the individual mandate was the biggest piece of the Supreme Courts decision. How does that affect employers? Well, you're not directly responsible for making sure your employees get health insurance, but the employer shared responsibility rules might make you feel like you are. Well start there because that's what worries employers most. Stay tuned in the coming weeks to **The Modern Workplace** for grandfathers, Cadillacs, and other fun health care reform topics today well start with

PAY or PLAY

This is the part of the law that might impose penalty taxes on employers. (Is it a tax? or a penalty? Well leave that for the Supreme Court watchers to decide. Either way, its a potential expense you don't want to get surprised by. Well use tax and penalty interchangeably here.) Were waiting for regulations on the details, but the basic idea is that if you're a large employer and you don't have a health plan, you're not playing, so you have to pay. You're also not playing if you have a plan but its not affordable. Here's how it works:

- **Are you a large employer?** If you have 50 or more full-time employees, this will apply to you. If you have fewer than 50, it might still apply, depending on what your part-time work force is like. (More on part-time workers later)
- **What's it going to cost me?** There are two kinds of penalties one for employers who don't offer coverage, and another for employers who offer coverage that's not affordable.
 - **No coverage offered:** If you have at least one full-time employee who gets coverage on the exchange and gets government assistance with that coverage, you will have a penalty of \$2,000 per year for each full-time employee you have, not counting the first 30. It doesn't matter that only one employee is actually getting government assistance.
 - **Coverage not affordable:** If the coverage you offer costs more than 9.5% of an employees household income, or your plan doesn't cover at least 60% of health care costs, you will have a penalty of \$250 per month for each employee who gets government assistance with coverage on the exchange. This one just counts employees actually getting government assistance. There's a cap on the tax its the amount of the penalty for not offering coverage (see above).

As you can see, these two ways of figuring penalties raise as many questions as they answer.

- **Who counts as a full-time employee?** Generally speaking, someone who works 30 hours per week is full-time. The IRS and other agencies are considering some safe harbors that would allow you to determine whether someone is a full-time employee for any particular month by looking back at the previous year. They're also working on how to treat new employees.
- **How do I know what my employees household income is unless his/her spouse works for me?** You cant, of course. The IRS is signaling that employers can use the employees W-2 income to make affordability determinations. Were also expecting a safe harbor providing that if the cost of single coverage isn't greater than 9.5% of the employees income, the plan is affordable.
- **How do I know whether our plan covers 60% of health costs?** The IRS is considering some different approaches to making the calculation. If you have a standard plan, you might be able to use a minimum value calculator or a safe harbor checklist. If your plan is unusual, you might need an actuarial certification.
- **What government assistance can my employees get if they buy health insurance on the exchange?** There are two kinds of assistance available assistance paying premiums, and assistance with cost-sharing (co-pays and so forth). Remember, your employee cant get assistance if your plan is affordable.
- **How do I know whether my employees are getting government assistance to buy coverage on an exchange?** The exchange will notify you if your coverage is determined to be unaffordable and your employee is eligible for assistance. You can appeal that decision.
- **Can I just keep all, or most, of my employees at less than 30 hours a week, and avoid being a large employer?** Even part-time employee hours count towards deciding whether you're a large employer. All of the part-time employee hours for a month will be aggregated and divided by 120 to get the number of your company's full-time equivalents. The full-time equivalents will be added to the full-time employees in your count. Even if the numbers work for you to stay below the 50-employee threshold, you need to consider whether you might be inadvertently discriminating against any class of employees that are protected under federal or state law, or interfering with any employee rights under your current benefit structure.
- **I'm afraid Ill have an employee go out and get coverage on the exchange even though I'm offering coverage don't want to pay for insurance and pay the penalty too.** If you offer coverage and its affordable (see above), then your employee cant get government assistance on the exchange, which means you cant be assessed a penalty.