

# Health Care Reform's Employer Mandate: Will You Pay or Play?

Back in July, the U.S. Treasury announced that the employer mandate—the so-called “pay or play” provision of the Affordable Care Act (“ACA”)—will not take effect until 2015, a year later than originally scheduled. This was welcome news, particularly for those less than fully prepared for the mandate's implementation.

It is probably a good idea to use the extra time to prepare for the mandate now. When 2015 does come, you will need to know whether you are subject to the penalty, and, if so, how much you will have to pay to the IRS if you don't satisfy the mandate.

The first step in navigating the ACA's employer mandate is to determine if you will be considered a large employer (and thus subject to the mandate). Under the ACA, a large employer employs an average of at least 50 full-time equivalent (“FTE”) employees on business days during the preceding calendar year. Therefore, with the one-year delay, you will need to look at the 2014 calendar year to determine if, in 2015, you are subject to a penalty.

Full-time employees are those who are paid an average of at least 30 hours per week (an employer can also use 130 hours per month as the standard). Part-time employees' hours will be converted into FTE employees to determine if an employer is a large employer. This is done by adding up all of the hours paid for part-time employees in each month (with a maximum of 120 hours taken into account) and dividing the total by 120. For example, if 12 part-time employees each were paid for 5

hours per week, they will count as if the business has two additional FTE employees (12 employees x 5 hours per week = 60 hours per week x 4 weeks = 240 monthly hours/120 = 2 FTE employees).

Large employers will need to offer minimum essential coverage that is affordable and provides minimum value or pay a penalty. “Affordable” generally means that the employee contribution amount for single coverage under the lowest cost coverage option does not exceed 9.5 percent of the employee's W-2 income (reported in Box 1). Coverage is also considered affordable if the cost of single coverage for an employee does not exceed 9.5 percent of the Federal poverty line (“FPL”) for a single individual, determined in the state in which the employee works. The FPL for Wisconsin in 2013 was \$957.50 a month, meaning the coverage would not be considered affordable under the FPL standard if it cost more than \$90.96 for the month.



## Biography

A shareholder with the law firm of Ruder Ware and a member of its Health Care Focus Team, **Attorney Mary Ellen Schill** is a frequent presenter and author of several

articles on the Affordable Care Act (ACA). She works closely with HR professionals and business owners on how to be proactive and prepared for ACA. Ruder Ware, with offices in Eau Claire and Wausau, is the largest law firm headquartered north of Madison.

The following scenarios may help to explain the employer mandate, whether you will be responsible for paying a penalty, and what that penalty might look like:

### Scenario 1

- You employ 50 or more FTE employees in 2014.
- You do not offer any coverage to full-time employees. One or more full-time employees purchases coverage on the Marketplace and receives subsidies for health insurance.
- Penalty = \$2,000 per full-time employee (minus the first 30 full-time employees).
- For example, in 2015, you employ 100 FTE employees and do not offer health insurance coverage to full-time employees. You owe \$2,000 per full-time employee, for a total penalty of \$140,000 (100 FTE employees - 30 full-time employees = 70, multiplied by \$2,000 each). The penalty is assessed on a monthly basis, so you would owe \$11,666.66 a month.

### Scenario 2

- You employ fewer than 50 FTE employees in 2014.
- You do not offer minimum essential coverage to full-time employees.
- You are not subject to a penalty under the employer mandate.

### Scenario 3

- You employ 50 or more FTE employees in 2014 and offer minimum essential coverage to full-time employees in 2015.
- One or more full-time employees procures coverage through the Marketplace and receives premium subsidies because premiums exceed 9.5 percent of the employee's income, or the coverage does not meet the 60 percent minimum value test.
- Penalty = the lesser of \$3,000 per subsidized full-time employee or \$2,000 per full-time employee (minus 30 full-time employees).
- For example, in 2015, you employ 100 FTE employees and offer health coverage to full-time employees. However,

20 of these employees receive a tax credit for the year for enrolling in the individual Marketplace because self-only premiums exceed 9.5 percent of their income. For each employee that receives a tax credit, you owe \$3,000, for a total penalty of \$60,000 (20 full-time employees x \$3,000 = \$60,000). The maximum amount that you owe would be capped at the amount that you would have paid for failing to provide minimum essential coverage to full-time employees, or \$140,000. You therefore owe the lesser penalty, \$60,000. This is assessed monthly, so you would owe \$5,000 per month.

- Ultimately, how the employer mandate affects you as an employer depends on a number of factors. These include: (1) the number of full-time and FTE employees; (2) whether you offer affordable, minimum essential coverage; and (3) whether one or more employees qualifies for government subsidies toward the purchase of health insurance in the individual Marketplace.

