March 2014

WELS Benefit Plans
Wisconsin Evangelical Lutheran Synod

Health Care Reform Resource Guide
Employer Shared Responsibility ("Pay or Play" Mandate)

Summary

The Affordable Care Act (ACA) requires that large employers must offer coverage to full-time employees and their dependents or pay a penalty. Dependents include children up to age 26, but not spouses.

Important Update as of March 2014!

The government has delayed implementation of this provision of the ACA for all employers until January 1, 2015. The potential penalties of the pay or play mandate will not be imposed on any employer until January 1, 2015. In addition, a one-year delay is applicable to employers with 50-99 full-time employees (plus full-time equivalent employees) for this provision to be effective 1/1/2016.

Definitions of Large Employer, Full-Time Employee and Full-Time Equivalent Employees

A large employer is generally defined by the ACA as an employer that averages at least 50 full-time employees (including full-time equivalent employees) in the preceding year. For example, to determine if an employer is a large employer for 2015, the employer would count the employees employed during 2014.

A "full-time employee" is an individual regularly working an average of 30 or more hours per week (or 130 hours per month).

The number of "full-time equivalent employees" (FTEs) is determined by adding the number of hours worked by each part-time employee in a month and dividing the total by 120. Note that seasonal employees can be excluded if they work fewer than 120 days in a year.

Calculate the number of full-time employees and FTEs for each month in a year, and add together each month's total to arrive at the yearly total of full-time employees. Then divide by 12 and disregard any remaining fractions. If the total of the employer's full-time employees is 50 or higher, that employer is considered to be a large employer under the ACA and subject to the "Pay or Play" mandate and its associated penalties.

Example: For every month in a calendar year, an organization has 22 full-time employees who work 30 or more hours per week. In addition, the organization has 10 part-time employees who all work 20 hours per week (80 hours per month per employee).

Monthly FTEs = 80 hours x 10 employees = 800 / 120 = **6.67**
Annual total = (6.67 x 12) + (22 x 12) = (80 + 264) / 12 = **28 full-time and full-time equivalent employees**

IMPORTANT TERMS

Affordable Coverage: Coverage is "affordable" if the employee's contribution for self-only coverage does not exceed 9.5% of household income. For 2015, a safe harbor allows employers to use Box 1 of the employee's Form W-2 wages to determine household income.

Marketplace: The online market available in each state on which individuals and small businesses can purchase health insurance.

Minimum Essential Coverage: Coverage provided through employer-sponsored plans, certain government plans (e.g. Medicare, Medicaid) and individual plans purchased on the Marketplace.

Minimum Value: Coverage is "minimum value" if the employer's health plan pays at least 60% of the member's total eligible claims expenses for covered services.

Premium Tax Credit: A government subsidy that allows individuals with low/modest incomes to purchase individual health insurance on the Marketplace at reduced premium rates.

(Over)

Because the organization in this example has fewer than 50 full-time and full-time equivalent employees, the organization is not a "large employer," and is not subject to the "pay or play" mandate under the ACA.

Penalties

Penalty #1: If employer **fails to offer** minimum essential coverage to all full-time employees and dependents ***and*** at least one full-time employee obtains Marketplace coverage ***and*** that employee qualifies for a government premium tax credit, the employer will be assessed a penalty that year.

The annual penalty amount is $2,000 per full-time employee (minus the first 30 employees). The penalty will be calculated on a monthly basis.

Penalty #1 calculation example: 1/12 x $2,000 x (number of full-time employees – 30) = Monthly Penalty

The offer of coverage, with opportunity to enroll or waive coverage, must be made **annually** to all full-time employees and dependents to avoid penalty #1.

Penalty #2: If employer **offers** minimum essential coverage to all full-time employees and dependents but the coverage is **not affordable** or is **not minimum value**, ***and*** at least one full-time employee obtains Marketplace coverage ***and*** that employee qualifies for a government premium tax credit, the employer will be assessed a penalty that year.

The annual penalty amount is $3,000 per full-time employee who receives a government premium tax credit for Marketplace coverage. The penalty will be calculated on a monthly basis. Note that if this penalty applies to the employer, but the penalty amount in the penalty #1 calculation above is less, the employer will be assessed the lesser of the penalty amounts.

Application to WELS VEBA

Based on our interpretation of the ACA regulations, as currently proposed, each sponsoring organization that participates in WELS VEBA is considered a separate employer under this provision of the ACA. Therefore, if your organization employs fewer than 50 full-time employees, this provision of the ACA (and its associated penalties) likely does not apply to your organization at this time.

If your organization does employ at least 50 full-time employees, please be aware that all four WELS VEBA health plan options currently meet the "minimum value" requirement. You may wish to review your organization's compensation policy to determine if WELS VEBA coverage is "affordable" for all of your full-time employees. In addition, you may wish to consider documenting the annual offer of coverage made to each full-time employee and each full-time employee's election or waiver of that coverage. Retaining this documentation will be essential to defend a potential penalty assessment to your organization.

Resource Links

- IRS notice clarifying counting of FTEs: http://www.irs.gov/pub/irs-drop/n-12-58.pdf
- IRS notice that clarifies the one-year delay: http://www.irs.gov/pub/irs-drop/n-13-45.PDF

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