

## Employer Mandates Under PPACA

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The Patient Protection and Affordable Care Act (“PPACA”) is the federal law that Congress passed in early 2010 in an effort to reform the U.S. health insurance industry. Although the legislation is fraught with problems and we are still waiting for interpretative guidance from the federal government in order to determine how best to comply with it, there are many provisions of the law that impose obligations and mandates upon employers that may or may not change before their implementation date. This article is intended to provide a high-level overview of some of those provisions so employers can begin thinking about the effects they will have on their business, and strategizing how best to prepare for the changes. This article is not intended to provide legal advice or an exhaustive overview of the law as the law is quite complex and, at this point, very unclear.

While a few of the less onerous requirements of PPACA have already become effective, and others will kick in over the next three years (*e.g.*, a prohibition on lifetime coverage limits and preexisting conditions for children, coverage eligibility of dependents up to age 26, improved coverage for wellness and routine care), the bulk of the mandates are scheduled to take effect in 2014. Some of those requirements apply to the health insurance policies issued by health insurance companies, and some apply directly to the employer and the employer’s benefit plan. For the purpose of this article, both health insurance policies issued by a licensed health insurance companies and self-funded employer-sponsored health plans will be referred to as “health insurance” although in reality, they are different animals. Here are a few of the mandates that will apply directly to the employer and the employer’s plan as of January 1, 2014. These provisions apply to all qualifying plans, regardless of whether the plan has retained grandfather status under PPACA.

- W-2 Disclosure (effective for tax years starting on or after January 1, 2012): Employers offering group health plans are required to disclose the cost of the employer-sponsored health benefits on employee W-2s. Contrary to many internet rumors, these benefits are not taxable until 2018 (and even then, they are only taxable if the health plan is rich enough to constitute a “Cadillac” health plan under the law).
- Employer mandate for employers with 51 or more full-time *equivalent* employees: While an employer doesn’t have to offer health insurance coverage, if an employer has 51 or more full-time *equivalent* employees and does not offer the benefit and at least one of the employer’s full-time employees receives a premium assistance tax credit, the employer will have to pay a penalty of \$2,000 per year per full-time employee (with the first 30 employees exempt). The term “full-time equivalent” includes employees who work 30 or more hour per week and *pro*

*rata* part-time employees, but does not include full-time seasonal employees who work less than 120 days during the year. If the employer offers qualified coverage but still has at least one full-time employee who receives a premium tax credit, the employer must pay an annual penalty of \$2,000 per full-time employee or \$3,000 per employee receiving the tax credit (whichever is less). The referenced premium tax credits will be available for certain individuals with incomes up to 400% of the federal poverty line (“FPL”).

It should be noted that the individual mandate of PPACA also takes effect at this time, although that provision is currently being challenged in court as a violation of the constitutional rights of both individuals and states. The individual mandate requires American citizens and legal residents (with a few exceptions) to purchase qualified health insurance coverage or pay a penalty. The penalty for non-compliance is the greater of a flat dollar amount per person (\$325 in 2015 increasing to \$695 in 2016) or a percentage of the individual’s income (1% in 2015 increasing to 2% in 2016).

- Minimum standards for qualifying coverage: In order for a large employer to be penalty proof, it isn’t enough that the employer simply offer health insurance. The employer must pay a minimum amount toward the coverage and the coverage must meet or exceed a minimum standard as established by the government. If at least one employee obtains a premium credit in a governmental insurance exchange, the employer will still be assessed a penalty unless: (1) the employer pays a sufficient amount of the premium so that no employee is forced to pay more than 9.5% of his or her household income for self-only coverage; and (2) the employer’s plan pays for at least 60% of the covered expenses.
- Free choice vouchers: Any employer who offers minimum essential coverage and pays any portion of the premium must provide free choice vouchers to any employee whose required contribution to the employer plan for self-only coverage is between 8% and 9.8% of the employee’s household income, whose household income is less than 400% of the FPL, and who does not participate in the employer’s plan. The employee will be allowed to purchase coverage through the governmental exchange, and the voucher will be equal to the monthly premium the employer would have paid if the employee would have participated in the employer’s plan. What’s more, if the free choice voucher exceeds the cost of the exchange coverage, the employee gets to keep the excess!
- Employer waiting periods limited to 90 days: Employers with 51 or more full-time employees are prohibited from imposing a waiting period of more than 90 days before an employee can enroll in the health insurance plan.

- Automatic enrollment (effective date unclear): Employers with 200 or more employees must automatically enroll new employees into a health insurance plan unless they affirmatively opt out.

As you might expect, employers are developing a wide range of strategies for dealing with PPACA. Some employers have said they will cut the hours of enough employees to part-time status so they fall below the large employer threshold thus avoiding the application and penalties of PPACA; others have said they will increase their employee benefits to ensure full compliance with the law's requirements; and still others have said they will simply drop coverage altogether and pay the penalty. Whatever your company's strategy, I would urge you to start developing it sooner rather than later because although it is quite possible that the law will be changed before 2014, as of today, it is the law of the land.