In Focus: Guide to the ACA employer mandate

The final regulations require employers with at least 50 full-time employees (including equivalents) in the prior year to provide minimum essential coverage[1] that is both affordable and provides minimum value[2] to at least 70 percent of their full-time employees and dependent children to age 26[3] or face the potential for a financial penalty. This requirement became effective Jan. 1, 2015.

Coverage must be provided to at least 95 percent of the employer's full-time employees and dependent children in order for the employer to be treated as offering coverage.

How does a 'new' employer determine if it is subject to the employer mandate?

An employer that was not in existence on any business day in the prior calendar year is considered an "applicable large employer" in the current year if it is reasonably expected to and actually does employ an average of at least 50 full-time employees (including equivalents) on business days during that first calendar year of existence.

Who is a 'dependent' for purposes of the employer mandate and when must dependent coverage be offered?

For purposes of the employer mandate, dependents are children to age 26. However, the final rule excludes foster children and stepchildren from this definition. Further, spouses are not included.

Who is eligible for federal assistance in purchasing health coverage on an exchange?

Most people with household income between 100 percent and 400 percent of the federal-poverty level who enroll in an individual qualified health plan through an exchange are eligible for a premium tax credit (federal dollars that offset some or all of the amount of premium an eligible individual would otherwise have to pay). If the person is eligible for employer-sponsored coverage, the person is eligible for the premium tax credit only if the employer-sponsored coverage is unaffordable or does not provide minimum value.

Most people with household income between 100 percent and 250 percent of the federal poverty level who enroll in a silver-level[4] individual qualified health plan through the exchange are eligible for a cost-share subsidy if available (federal dollars that reduce the amount an eligible individual pays out of pocket for co-insurance and co-payments). If the person is eligible for employer-sponsored coverage, the person is eligible for the cost-share reduction only if the employer-sponsored coverage is unaffordable or does not provide minimum value.

Analyzing the employer mandate

The final rule and this guide provide step-by-step directions so that an employer can:

- Count the number of full-time employees and equivalents to determine whether the rule applies to the company
- Determine whether an employee is "full time" for purposes of a coverage offer
- Count the number of full-time employees to determine potential penalties
- Determine whether its health plan is affordable
- Determine whether its health plan provides minimum value
- Calculate potential penalties that could be triggered if a full-time employee buys coverage on an exchange established under the ACA and receives a premium tax credit or cost-share subsidy when doing so.

What are the penalties?

If the employer fails to offer minimum essential coverage and any full-time employee receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange, the employer's penalty is $2,260 or $188.33 per month for 2017 ($2,320 or $193.33 per month for 2018) multiplied by the total number of full-time employees, not counting the first 30.

If the employer offers minimum essential coverage, but that coverage is unaffordable or does not provide minimum value, and any full-time employee receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange, then the penalty is $3,390 or $282.50 per month for 2017 ($3,480 or $290 per month for 2018) multiplied by the number of full-time employees who receive a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange (capped at the penalty amount that would apply had the employer not offered any coverage at all).

How are penalties determined?

The determination of who is a full-time employee, and therefore the amount of any potential penalty, is determined on a month-by-month basis. Detailed information about how to calculate penalties are provided in this guide.

What types of health plans are affected?

Fully insured and self-funded health plans are equally affected by the employer mandate.

KEY TAKEAWAYS:

- Employers with 50 or more full-time employees and equivalents in the preceding year can face penalties for not providing employer-sponsored health insurance to all but 5 percent of its employees (or, if greater, five employees) and their dependent children to age 26.
- Employers that do not offer minimum essential coverage that is affordable and provides minimum value could face a penalty of $2,260 or $188.33 per month for 2017 ($2,320 or $193.33 per month for 2018) for each full-time employee (not counting the first 30) if any full-time employee receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange.
- If an employer offers minimum essential coverage, but the coverage is unaffordable or does not provide minimum value, then the penalty is $3,390 or $282.50 per month for 2017 ($3,480 or $290 per month for 2018) for each full-time employee who receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange (capped at the penalty amount that would apply had the employer not offered any coverage at all).

[1] Under the ACA, minimum essential coverage is defined as basically any form of employer-sponsored group health plan, but does not include HIPAA-excepted benefits, such as dental only, fixed indemnity or specified disease coverage.

[2] A group health plan provides minimum value if the percentage of the total allowed costs of benefits provided under the plan is at least 60 percent, and effective April 28, 2015, includes substantial coverage of both inpatient hospital and physician services.

[3] To avoid possible penalties, businesses subject to the employer mandate must provide health coverage to a dependent child through the end of the month in which he or she attains age 26. If coverage extends beyond the 26th birthday, the value of the coverage can continue to be excluded from the employee's income for the full tax year (generally a calendar year) in which the adult dependent child turns 26.

[4] Health insurance products available for purchase in the individual and small group markets will be categorized into different "metal" tiers, each with a different actuarial value. The silver plan has a 70 percent actuarial value.

Meet Joe Channel, President of Irene's Famous Ice Cream Factory

To help illustrate the steps an employer must take to determine its obligation under the employer mandate, we developed a fictional character, Joe Channel, president of the fictional Irene's Famous Ice Cream Factory. The family-owned company has been a presence in the small community of Blue Mountain Springs, Colo., since 1952 when its five employees produced vanilla, chocolate and strawberry ice cream for Irene's own small store and soda fountain, as well as delivered it to grocery stores, markets and some restaurants in surrounding counties.

For purposes of understanding the employer mandate, we're going to travel into the future. Today is Feb. 1, 2018. Irene's now makes 25 flavors of premium ice cream year round and distributes products across the state of Colorado. But the ice cream maker is in a lean period, with the promise of better times ahead. Amid all his other business challenges, Joe is working hard to make sense of the employer mandate under PPACA. Throughout this guide, we'll follow his journey to get a close look at what the employer mandate really means, become familiar with new terms introduced in the employer mandate and learn how to determine if a company is subject to provisions in the employer mandate, along with how to determine potential penalties – even when a business offers an employer-sponsored health plan.

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STEP 1

Does the employer mandate apply to your company?

How employers should count the number of full-time employees to determine if the employer mandate applies to their business

The employers that have a parent company, subsidiary, affiliate or similar structure should remember that the employee count, and whether the rule applies to an employer, is determined on a controlled group basis following the aggregation rules under Section 414 (b), (c), (m) and (o) of the Internal Revenue Code. Each company under common control could be considered an applicable large employer and affected by the employer mandate.

The employer mandate applies to employers with at least 50 full-time equivalents.

How to determine in general who is a full-time employee:

The ACA defines a full-time employee as one who works 30 hours per week on average (or 130 hours on average in a calendar month). The following outlines ways to determine if an employee meets that criterion:

- For employees paid on an hourly basis, an employer must calculate actual hours of service.
- For employees paid on a non-hourly basis, an employer must calculate hours of service using one
  of three methods below. (An employer is not required to use the same method for all classifications[5] of non-hourly employees, provided the classifications are reasonable and consistently applied.)
  1. Counting actual hours of service.
  2. Using the days-worked equivalency. With this method, an employer would count eight hours of service for each day an employee is credited with at least one hour of service.
  3. Using the weeks-worked equivalency. With this method, an employer would count 40 hours of service for each week an employee is credited with at least one hour of service.

An employer must count all hours for which an employee is paid, including sick leave, vacation and holidays, not just while the employee is on the job.

Calculation to use to determine whether an employer is an applicable large employer:

1. Determine the number of full-time employees for each month in the preceding calendar year by identifying the number of employees who averaged at least 30 hours per week. Add the total for each month together.
2. Determine the number of full-time equivalents for each month in the preceding calendar year by adding the hours worked by part-time employees (but don't count more than 120 hours for any one part-time employee) and divide by 120 for the month rounding to the nearest one hundredth. Add the total for each month together.
3. Add together the totals from steps 1 and 2 and divide by 12. Fractions can be rounded down.
4. If the result is 50 or more employees, the employer mandate applies to the employer, unless a seasonal worker[6] exception applies.

If the result is less than 50 employees, the employer mandate does not apply to the employer. An employer with less than 50 employees is not required to provide minimum essential health coverage and will not face an annual financial penalty for not providing an employer-sponsored health plan.

[5] An employer may classify non-hourly employees and vary which of the three methods above is applied to each class, but the classification must be reasonable and applied consistently. The employer may change methods annually. While the rule does not specify which classifications are permitted, examples may include union vs. non-union, or employees in different geographic locations.

[6] Seasonal worker is defined by the Secretary of Labor guidance, including but not limited to 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. Seasonal Worker Exception = If the sum of an employer's full-time employees and full-time equivalents exceeds 50 for 120 days or less during the preceding calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days are seasonal workers, the employer mandate does not apply to the employer for the current calendar year. Four calendar months may also be used. The 120 days (or four calendar months) need not be consecutive. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker."

KEY TAKEAWAYS:

- To determine whether the employer mandate applies to companies under common control, these businesses must aggregate all employees in the controlled group.
- The employer mandate defines a full-time employee as one who works 30 hours per week on average (or 130 hours on average in a calendar month).
- To count employees paid on an hourly basis, an employer calculates actual hours of work.
- To count employees paid on a non-hourly basis, the rule offers three ways to calculate hours of service.

Does the rule apply to Irene's?

As president of Irene's, Joe must first determine if the rule applies to the ice cream manufacturer founded by his grandfather and named after his grandmother. Remember, it's Feb. 1, 2018.

Bill Ford

Throughout 2017, Irene's had 60 ongoing employees, each of whom averaged 30 hours per week each month for the entire year. Effective Jan. 1, 2018, half of Irene's employees (30) had to change to part-time status, each working 30 hours per month throughout 2018, because the company lost money on production of new frozen dessert lines that were not embraced by the company's traditional customer base. Joe is planning on the reduced hours being a temporary measure and that the positions can return to full time during the first quarter of 2019. He hired one new variable-hour employee on Jan. 1, 2018, Bill Ford, who also averages 30 hours per month throughout 2018, to help out wherever needed. Irene's continues to sponsor a group health plan, providing coverage to its full-time employees and complying with the ACA mandate to cover dependent children through age 26.

Conclusion for 2018

The answer to the question of "Does the employer mandate apply to Irene's Famous Ice Cream Factory for 2018?" is an easy one. The answer is yes, because it employed at least 50 full-time employees in 2017.

The fact that some of the company's employees transitioned to part time in 2018 or that Joe hired one new variable-hour employer in January 2018 is irrelevant to determining whether the rule applies to Irene's for 2018.

Here are the steps Joe would take to determine whether the employer mandate applies to Irene's for 2019:

1. Joe determines the number of full-time employees for each month in the preceding calendar year by identifying the number of employees who averaged at least 30 hours per week. He adds the total for each month together:

   Calculation:

   30 full-time employees x 12 months = 360

2. Joe determines the number of full-time equivalents for each month in the preceding calendar year by adding the hours worked by part-time employees. Then he divides by 120 for the month and adds the total for each month together.

   Calculations:

   31 (part-time employees) x 30 (hours per month) = 930
   930/120 = 7.75
   7.75 x 12 = 93

3. Joe adds the numbers from steps 1 and 2 together and divides by 12. It is permissible to round down fractions.

   Calculations:

   360 + 93 = 453
   453 / 12 = 37.75 *(rounded down to 37)*

4. Because Irene's had less than 50 full-time employees and equivalents (only 37) in 2018, the rule would not affect Irene's for 2019.

STEP 2

Which measurement method should your company use?

How employers should decide if they want to determine an employee's full-time status for each calendar month or if they want to determine full-time status based on longer specified time frames.

Under the final rule, employers can use either a "monthly measurement method" or a "look-back measurement method" for purposes of determining who is a full-time employee who needs to be offered coverage.

Monthly measurement method

The "monthly measurement method" is used on a month-by-month basis where the employer determines each employee's status as a full-time employee by counting the employee's hours of service for each month. An employee is full-time if he provided 130 hours of service for a month.

Under this method, the employer may also use the "weekly rule" in which the employer uses payroll periods to determine full-time status on a monthly basis. For calendar months with four-week periods, an employee with at least 120 hours of service is a full-time employee, and for calendar months with five-week periods, an employee with at least 150 hours of service is a full-time employee.

An employer will not be subject to a penalty with respect to an employee for each calendar month during the period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for coverage, provided that the employee is offered coverage that provides minimum value no later than the first day of the first calendar month immediately following the three-month period.

Look-back measurement method

Because monthly determinations could be administratively burdensome and result in continuous uncertainty, particularly for employers who have a significant population of employees that don't work the same number of hours each week or month, the final rule provides an alternative method.

As further applied in Step 3 of this guide, under the look-back measurement method, the employer determines whether an employee will be treated as full-time during a future period (referred to as the stability period) based upon the hours of service of the employee in a prior period (referred to as the measurement period).

KEY TAKEAWAYS:

- The rule introduces a look-back measurement period as well as a monthly measurement period, optional administrative period and stability-period methodology to determine how employers should count full-time employees to determine their potential penalty.

Which measurement method should Irene's use?

It's Feb. 1, 2018, and Joe decides that even though he has one variable-hour employee, Bill Ford, he does not want the administrative burden of making a month-by-month determination of hours for each of his employees. Joe therefore opts for the look-back measurement method, which he will have to apply in step 3.

STEP 3

Who is a full-time employee who must be offered coverage in order to avoid a penalty?

How employers should determine who is a full-time employee who needs to be offered coverage

In Step 2, we learned that employers can use either a "monthly measurement method" or a "look-back measurement method" for purposes of determining who is a full-time employee who needs to be offered coverage. However, different rules apply for different types of employees. Below we discuss a few of those categories, such as variable-hour, part-time and seasonal employees and apply the look-back measurement method. Refer to the final rule for discussion of other categories such as employees of educational institutions, religious orders and individuals involved in certain work-study programs.

New Employees

Under the rule, when a new employee begins employment, the employer will need to determine if they anticipate the employee will be a regular full-time employee working an average of 30 hours per week or a seasonal, variable-hour or part-time employee.

Important information on types of new employees:

New regular full-time employees: New regular full-time employees are those whom an employer reasonably expects to work an average of 30 hours per week. The employer must offer health coverage to new employees expected to be full time within three calendar months after their start date (i.e. by the first day of the fourth full calendar month) or risk penalties. This three-calendar-month rule for purposes of determining potential penalties should not be confused with the separate rule under ACA that prohibits waiting periods in excess of 90 days.

No measurement period applies to new regular full-time employees. As discussed later in this guide, new regular full-time employees become "ongoing" employees after they have been employed for the full measurement period that the employer applies to ongoing employees.

New seasonal employees: The term *seasonal employee* means an employee who is hired into a position for which the customary annual employment is six months or less. In general, the employment period should begin each calendar year in approximately the same part of each year. If a new seasonal employee works at least 30 hours per week (130 hours per month) over an initial measurement period, one of the measurement periods established under the rule, the employer would need to offer that employee coverage or risk a penalty.

New variable-hour employees: A new variable-hour employee is an employee who, as of the employee's start date, the employer cannot reasonably determine whether the employee will be employed an average of 30 hours per week during the initial measurement period, one of the measurement periods established under the rule, because the employee's hours are uncertain. If a new variable-hour employee works at least 30 hours per week (130 hours per month) over the initial measurement period, the employer would need to offer that employee coverage or risk a penalty.

New part-time employees: A new part-time employee is one who the employer reasonably expects to be employed on average less than 30 hours per week during the initial measurement period, based on the facts and circumstances at the employee's start date. If a new part-time employee works at least 30 hours per week (130 hours per month) over the initial measurement period, the employer would need to offer that employee coverage or risk a penalty.

Important terms to know:

Initial measurement period, a period of between 3 and 12 months that begins on any date between the employee's start date and the first day of the first calendar month following the employee's start date.

Administrative period, an optional period for the employer to determine which employees are full-time, to provide employees with plan information, host open enrollment and conduct other administrative functions related to plan enrollment. The administrative period is a snapshot in time of up to 90 days that begins immediately after the end of an initial measurement period and that ends immediately before the associated stability period. It includes all periods between the start date of a new variable-hour or new seasonal employee and the date the employee is first offered coverage, other than the initial measurement period. However, for new variable-hour or new seasonal employees, the initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. For example, if an employee's first day of employment is April 20, 2017, the initial measurement period plus administrative period may not end later than May 31, 2018.

Stability period, a period of at least six consecutive calendar months and no shorter in duration than the initial measurement period. If the employer has ongoing employees, the stability period must be the same duration of time (but not necessarily the same time period) as that applied to ongoing employees. The stability period must follow the initial measurement period and any applicable administrative period.

Five steps to take to determine whether new variable-hour, new part-time and new seasonal employees are full-time employees for the purposes of determining potential penalties using the look-back measurement method:

1. Determine an initial measurement period.
2. Determine whether to use an optional administrative period.
3. Determine a stability period.
4. Determine whether an employee worked on average 30 hours per week during the initial measurement period.
5. If so, for purposes of any potential penalty, the employer counts the employee as full-time during the stability period, regardless of the number of hours the employee worked during the stability period. The number of employees counted as full-time during the stability period is the number of full-time employees to use in calculating potential penalties.

If the employee did not work an average of 30 hours per week during the initial measurement period, for purposes of any potential penalty, the employer does not count the employee as full-time during the stability period, regardless of the number of hours the employee worked during the stability period. However, in this scenario, the stability period must not be more than one month longer than the initial measurement period and must not exceed the remainder of the standard measurement period (applicable to ongoing employees), plus any associated administrative period in which the initial measurement period ends.

Note regarding transition from new variable-hour and new seasonal employee to an ongoing employee: Once a new variable-hour or new seasonal employee has been employed for an entire standard measurement period, the employer must test the employee for full-time status, beginning with the standard measurement period, at the same time and under the same conditions as applied to other ongoing employees.

Note regarding change in employment status: If the employment position or status of a new variable-hour or new seasonal employee materially changes before the end of the initial measurement period such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected to be employed on average at least 30 hours per week, the employer is not required to treat the employee as a full-time employee for purposes of determining the penalty until the first day of the fourth month following the change in status, or if earlier and the employee averages more than 30 hours per week during the initial measurement period, the first day of the first month following the end of the initial measurement period including any administrative period.

New variable-hour, part-time and seasonal employees

It's Feb. 1, 2018, and Joe, president of Irene's Famous Ice Cream Factory, already knows that the rule applies to his company for 2018. He is trying to determine if his company faces a penalty for the month of January 2018, and, if so, the amount. To do so, he starts by figuring out how many full-time employees worked for his ice cream company for purposes of the penalty for January 2018.

Remember, for all of 2017, Irene's had 60 ongoing employees, each of whom averaged 30 hours per week each month. Effective Jan. 1, 2018, half of Irene's employees (30) became part-time employees, each working 30 hours per month throughout 2017. Irene's hired Bill Ford, a new variable-hour employee on Jan. 1, 2018, who is expected to average 30 hours per month throughout 2018.

Joe must first determine how many new variable-hour and seasonal employees were employed by Irene's in 2017.

Conclusion

The answer to "How many new variable-hour and seasonal employees does Irene's employ for purposes of determining a penalty for January 2018?" is none. Irene's is not required to treat Bill, the new variable-hour employee who was hired on Jan. 1, 2018, as a full-time employee for purposes of calculating the penalty for January 2018. This employee is still in his initial measurement period that runs from Jan. 1, 2018, through Dec. 31, 2018. (If Irene's determines that Bill averaged at least 30 hours per week for the duration of the initial measurement period, all of 2018, Bill will be treated as a full-time employee for purposes of potential penalties in January 2019.)

Ongoing Employees

Important information about ongoing employees:

An ongoing employee is an employee who has been employed for one complete standard measurement period, one of the measurement periods established under the proposed rule. While each new seasonal and variable-hour employee may have a different initial measurement period and stability period based on the date of hire, each ongoing employee will have the same standard measurement period and stability period.

Important terms to know:

Standard measurement period, a retrospective period of at least 3 but not more than 12 consecutive months.

Administrative period, an optional period for the employer to determine which employees are full-time, to provide employees with plan information, host open enrollment and to conduct other administrative functions related to plan enrollment. The administrative period is a snapshot in time of up to 90 days that begins immediately after the end of a standard measurement period and that ends immediately before the associated stability period. Any administrative period for ongoing employees may neither reduce nor lengthen the measurement period or the stability period.

Stability period, a period of at least six consecutive calendar months but no shorter than the standard measurement period. The stability period must follow the standard measurement period and any applicable administrative period. Generally, the standard measurement period and stability period must be the same for all employees with the following exceptions: (i) collectively bargained employees vs. non-collectively bargained employees; (ii) salaried vs. hourly employees; and (iii) employees whose primary place of employment are in different states.

Five steps to take to determine whether ongoing employees should be counted as full-time employees for the purposes of determining potential penalties using the look-back measurement method:

1. Determine a standard measurement period.
2. Determine whether to use an administrative period.
3. Determine a stability period.
4. Determine whether an employee worked on average 30 hours per week during the standard measurement period.
5. If so, for purposes of any potential penalty, the employer counts the employee as full-time during the stability period, regardless of the number of hours the employee worked during the stability period. The number of employees counted as full-time during the stability period is the number of full-time employees to use in calculating potential penalties.

If the employee did not work an average of 30 hours per week during the standard measurement period, for purposes of any potential penalty, the employer does not count the employee as full-time during the stability period, regardless of the number of hours the employee worked during the stability period.

Note regarding change in employment status: If an ongoing employee's employment status changes before the end of a stability period, the change will not affect the employee's full-time (or part-time) status for the remaining portion of the stability period for purposes of calculating a potential penalty.

Note regarding breaks in service and employees rehired after termination of employment: Employers may treat rehired employees as new employees if there is a break in service of at least 26 consecutive weeks or, if less than 26 weeks, if the break in service is at least four consecutive weeks long and is longer than the number of weeks of the employee's period of employment immediately preceding the break in service.

KEY TAKEAWAYS:

- The type of employee at issue drives when a measurement period, optional administrative period and stability period start and end.
- To calculate potential penalties, employers must count each employee considered full-time during the measurement period as full-time during the corresponding stability period as long as that employee remains employed, regardless of hours worked during the stability period.
- Employers must offer health coverage to new "regular" employees expected to be full time as of their start date within three calendar months after their start date or risk penalties.

Facts:

It's Feb. 1, 2018. Joe, president of Irene's Famous Ice Cream Factory, already knows that the rule applies to his company. He has started the process to determine if his company faces a penalty for the month of January 2018, and, if so, the amount. He has determined that Irene's employed no new variable-hour or seasonal employees in 2017, and is now determining how many full-time employees worked for his ice cream company in January 2018 for purposes of the penalty.

Remember, Irene's Famous Ice Cream Factory has 60 ongoing employees, each of whom averaged 30 hours per week each month in 2017. Effective Jan. 1, 2018, half of Irene's employees (30) became part-time employees, each working 30 hours per month throughout 2018. Irene's hired one new variable-hour employee on Jan. 1, 2018, who is expected to average 30 hours per month throughout 2018.

Joe's steps

1. Joe must determine a standard measurement period for ongoing employees, and he elects 12 months from Jan. 1, 2017, through Dec. 31, 2017.
2. He then must decide if he wants to select an optional administrative period, but he opts against it.
3. He also selects a stability period for ongoing employees of 12 months: Jan. 1, 2018 through Dec. 31, 2018.
4. He then must determine how many employees worked on average 30 hours a week during the standard measurement period. For Irene's, the number of employees that falls into this category is 60, everyone who works at the ice cream factory. (The fact that 30 of the employees switched to part-time in January 2018 or that Bill, a new variable-hour employee, was hired in January 2018 is irrelevant for purposes of calculating the penalty for January 2018.)
5. To calculate potential penalties, employers must count each employee considered full-time during the standard measurement period as full-time during the stability period as long as that employee remains employed. The number of full-time employees working during the stability period is the number of full-time employees used in calculating potential penalties.
   For Irene's, the number of full-time employees, for the purpose of potential penalties for January 2018, is 60.

Calculation:

Number of new variable-hour, part-time and seasonal employees:	0
Number of ongoing employees:	60
For purposes of calculating penalties, the number of full-time employees for January 2018:	60

STEP 4

Does your company provide an affordable health plan?

How employers affected by the employer mandate should determine if the health coverage they offer is affordable

Under the rule, employer-sponsored health coverage is considered affordable if an employee's required contribution to the plan does not exceed 9.69 percent of the employee's household income[7] for 2017 (9.56 percent for 2018).

Rather than trying to figure out an employee's household income, the employer may use one of three safe harbors to determine affordability. These safe harbors may be used only if the employer offers its full-time employees and their dependent children to age 26 the opportunity to enroll in an employer-sponsored plan that offers self-only coverage providing minimum value. (For more on minimum value, see page 15.)

Here are the three safe harbors employers can use to determine whether their health plan is affordable under the rule:

- **W-2 safe harbor:** The coverage is affordable for a full-time employee if the employee's required contribution for the calendar year for the employer's lowest-cost self-only coverage that provides minimum value does not exceed 9.69 percent of that employee's IRS Form W-2 wages for 2017 (9.56 percent for 2018). To qualify for this safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the calendar year.

- **Rate-of-pay safe harbor:** With respect to an hourly employee, the coverage is affordable for a calendar month if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value does not, for 2017, exceed 9.69 percent (9.56 percent for 2018) of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month. With respect to a non-hourly employee, the coverage is affordable for a calendar month if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value does not, for 2017, exceed 9.69 percent (9.56 percent for 2018) of the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay). However, if the monthly salary is reduced, including due to a reduction in work hours, the safe harbor is not available.

- **Federal-poverty-line safe harbor:** The coverage is affordable for a full-time employee if the employee's required contribution for the calendar month for the employer's lowest-cost self-only coverage that provides minimum value does not, for 2017, exceed 9.69 percent (9.56 percent for 2018) of a monthly amount determined as the federal poverty line (for the state in which the employee is employed) for a single individual for the applicable calendar year, divided by 12. (Note: The 2017 federal poverty line for the 48 contiguous states and Washington, D.C., is $12,060. For Alaska, the 2017 federal poverty line is $15,060; for Hawaii, $13,860.)

KEY TAKEAWAYS:

- Under the employer mandate, employer-sponsored health coverage is considered affordable if an employee's required contribution to the plan does not exceed 9.69 percent of the employee's household income for 2017 (9.56 percent for 2018).
- Rather than trying to determine employees' household income, employers can use three safe harbors to determine whether their health plan is affordable under the rule.

[7] Modified adjusted gross income for the employee and any members of the employee's family who are required to file a federal tax return

Is Irene's health plan affordable?

It's Feb. 1, 2018. Joe, president of Irene's Famous Ice Cream Factory, knows that the rule applies to Irene's and that, for purposes of calculating penalties for January 2018, Irene's has 60 full-time employees. He now must determine whether the ice cream maker's health plan is affordable for all full-time employees.

In 2018, Irene's sponsors a group health plan, providing coverage to its full-time employees and their dependent children to age 26. The plan year is Jan. 1 through Dec. 31, 2018. The employee contribution for self-only coverage for the lowest-cost plan option is $300 per month.

Elizabeth Smith

Hannah Jones

Josh Meyer

David Spark

For most of Irene's employees, the cost for self-only coverage under the lowest-cost plan option does not exceed 9.56 percent of their household income. However, Irene's has four ongoing full-time employees – Elizabeth Smith, Hannah Jones, Josh Meyer and David Spark – each of whom works as an ice cream server, earning a salary of $25,000 a year (W-2 wages of $2,083 per month). Each of the four has no other household income. The federal poverty line in the state where they live is $12,060 per year. Each bought individual coverage on the state exchange, effective Jan. 1, 2018, and received a premium tax credit for the month of January.

Bill, the variable-hour employee that Irene's hired effective Jan. 1, 2018, also makes less than 400 percent of the federal poverty level, so Irene's health plan is also unaffordable for him. Bill bought individual coverage on the state exchange, effective Jan. 1, 2018, and received a premium tax credit for the month of January.

For the five employees, Irene's health plan is unaffordable. The cost of self-only coverage in the lowest-cost plan option is unaffordable because their required contribution exceeds:

- 9.56 percent of the employee's household income
- 9.56 percent of the employee's W-2 wages
- 9.56 percent of the employee's rate of pay
- 9.56 percent of the federal poverty level

Conclusion: The coverage offered by Irene's is affordable for all but five of its employees. However, the situation of only four – Elizabeth, Hannah, Josh and David – will result in a penalty for January 2018 for Irene's under the employer mandate.

Irene's Famous Ice Cream Factory delicious flavor

STEP 5

Does your employer-sponsored health plan provide minimum value?

How employers affected by the rule should determine if the health coverage they offer provides minimum value

A group health plan provides minimum value if the percentage of the total allowed costs of benefits provided under the plan is at least 60 percent and it includes substantial coverage of both inpatient hospital and physician services.

Under the rule, an employer-sponsored health plan may use one of the following three methods to determine if it provides minimum value.

1. The minimum value calculator from the U.S. Department of Health and Human Services (HHS) and the IRS. To access the calculator, copy and paste this link into an Internet Explorer or Google Chrome browser: **https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mv-calculator-final-4-11-2013.xlsm**
2. Any safe harbor established by HHS and the IRS. (At the time this guide was published, HHS and the IRS had not yet established any safe harbors for the purposes of determining whether a health plan provides minimum value.)
3. Certification by an American Academy of Actuaries (AAA) actuary.

If a group health plan uses the minimum value calculator from HHS and offers benefits outside of the parameters of the calculator, the plan may seek an AAA actuary to determine the value of that benefit and adjust the result derived from the minimum calculator to reflect that value.

The standard population that HHS applied to develop the minimum value calculator reflects the population covered by large group health plans, including self-funded health plans.

KEY TAKEAWAYS:

- The federal government has identified several methods to determine if an employer-sponsored health plan provides minimum value.
- Federal agencies have released a minimum value calculator.

Irene's health plan and minimum value

The health plan offered by Irene's Famous Ice Cream Factory provides substantial coverage of both inpatient hospital and physician services.

Joe uses the federal agencies' minimum value calculator to determine that the health plan's percentage of the total allowed costs of benefits is at least 60 percent.

Conclusion: Irene's health plan provides minimum value.

STEP 6

Does your company face penalties under the employer mandate?

How to calculate potential penalties

If the employer fails to offer its full-time employees and their dependent children to age 26 minimum essential coverage and any full-time employee receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange, the employer's penalty is $2,260 or $188.33 per month for 2017 ($2,320 for 2018 or $193.33 per month for 2018) multiplied by the total number of full-time employees, not counting the first 30.

For employers under common control, when discounting the first 30 full-time employees, the 30 full-time employees would be allocated proportionately (based on the number of employees) between each employer in the controlled group.

If the employer offers its full-time employees and their dependent children to age 26 minimum essential coverage, but that coverage is unaffordable or does not provide minimum value, and any full-time employee receives a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange, then the penalty is $3,390 or $282.50 per month for 2017 ($3,480 for 2018 or $290 per month for 2018) multiplied by the number of full-time employees who receive a premium tax credit or cost-share subsidy when purchasing individual health coverage on an exchange (capped at the amount that would apply had the employer not offered any coverage at all).

Remember that the determination of who is a full-time employee, and therefore the amount of any potential penalty, is determined on a month-by-month basis. The IRS has issued the following guidance:

1. The IRS will adopt procedures that ensure employers receive certification that one or more employees have received a premium tax credit.
2. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.
3. The contact for a given calendar year will not occur until after the due date for employees to file individual tax returns for that year claiming premium tax credits and after the due date for employers to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).
4. If it is determined that an employer is liable for an Employer Shared Responsibility payment after the employer has responded to the initial IRS contact, the IRS will send a notice and demand for payment. That notice will instruct the employer on how to make the payment. Employers will not be required to include the Employer Shared Responsibility payment on any tax return that they file.

KEY TAKEAWAYS:

- Both penalties are dependent on any full-time employee receiving a premium tax credit or cost-share subsidy when purchasing individual coverage on an exchange.
- The amount of a potential penalty is determined on a month-by-month basis.
- At the time this guide was published, the federal government had not yet identified when – for example, monthly, quarterly or annually – the penalties will be collected.

Does Irene's face penalties under the rule?

Joe knows that the rule applies to his company. He knows that, for purposes of calculating a penalty for January 2018, Irene's has 60 full-time employees. He has also determined that Irene's health plan provides minimum value but is not affordable for four full-time ongoing employees.

Because Elizabeth, Hannah, Josh and David purchased individual health insurance on an exchange and received a premium tax credit for January 2018, Irene's will pay a penalty for January 2018 of $290 for each of the four.

For the purposes of calculating potential penalties in 2018, it is irrelevant that health insurance from Irene's is unaffordable for Bill, the variable-hour employee hired on Jan. 1, 2018, and that he received a premium tax credit because he will not be counted as a full-time employee in 2018 under the rule. (He will be counted as a full-time ongoing employee in 2019 if he averages 30 hours per week throughout 2018.)

Calculation:

4 (full-time ongoing employees who received a premium tax credit) x $290 (penalty) = $1,160 penalty for January 2018

Tying it all together for Irene's Famous Ice Cream Factory

Facts: It's Feb. 1, 2018. Let's review what Joe has learned:

STEP 1:

Question: For January 2018, does the employer mandate apply to Irene's Famous Ice Cream Factory?

Answer from page 6: Yes

STEP 2:

Question: Which measurement method should Irene's use?

Answer from page 7: Irene's decides to use the look-back measurement method.

STEP 3:

Question: For purposes of determining potential penalties, how many full-time employees are employed at Irene's?

Answer from page 11: 60 full-time employees

STEP 4:

Question: Does Irene's provide an affordable health plan?

Answer from page 13: For most employees, Irene's health plan is affordable. However, the cost is unaffordable for four full-time ongoing employees in January 2018.

STEP 5:

Question: Does Irene's employer-sponsored health coverage provide minimum value?

Answer from page 14: Yes

STEP 6:

Question: For January 2018, does Irene's face penalties under the employer mandate?

Answer from page 15: Yes, a $1,160 penalty

Important note: If the employment situation does not change for the remainder of 2018, then Irene's would be penalized $1,160 per month for the entire year for a total penalty of $13,920 for 2018.

PLEASE NOTE: This material represents a high-level summary of ACA laws, rules or regulatory guidelines and is not comprehensive. It may not be construed as tax, legal or compliance advice. Please consult you professional benefits adviser or legal counsel regarding how these provisions may impact your specific benefit plan.

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