



# Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)

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This report describes and illustrates the penalties, when applicable beginning in 2014, to employers under the new health insurance reform law—specifically, in §1513 and §10106 of the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148), as amended by §1003 of the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). Hereafter, PPACA will refer to PPACA as amended by the reconciliation act.

PPACA does not explicitly mandate an employer to offer employees acceptable health insurance. However, certain employers with at least 50 full-time *equivalent* employees will face penalties, beginning in 2014, if one or more of their full-time employees obtains a premium credit through an exchange.<sup>1</sup> As described in greater detail below, an individual may be eligible for a premium credit either because the employer does not offer coverage or the employer offers coverage that is either not “affordable” or does not provide “minimum value.”

## Application Only to “Large Employers”

Only a large employer may be subject to penalties regarding employer-sponsored health insurance. A “large employer” is an employer with more than 50 full-time *equivalent* employees during the preceding calendar year.<sup>2</sup> As shown in **Table 1**, in order to determine whether an employer is a “large employer,” both full-time and part-time employees are included in the calculation. “Full-time employees” are those working 30 or more hours per week.<sup>3</sup> The number of full-time employees excludes those full-time seasonal employees who work for less than 120 days during the year.<sup>4</sup> The hours worked by part-time employees (i.e., those working less than 30 hours per week) are included in the calculation of a large employer, on a monthly basis, by taking their total number of monthly hours worked divided by 120.

For example, a firm has 35 full-time employees (30+ hours). In addition, the firm has 20 part-time employees who all work 24 hours per week (96 hours per month). These part-time employees’ hours would be treated as equivalent to 16 full-time employees, based on the following calculation:

$$20 \text{ employees} \times 96 \text{ hours} / 120 = 1920 / 120 = 16$$

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<sup>1</sup> For more information about exchanges under PPACA, see CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*. For more information on premium credits in particular, see CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*.

<sup>2</sup> The statutes use the term *full-time employee* in the definition of large employer, but then expand on the definition of large employer to include both full- and part-time workers. Internal Revenue Code (IRC) §4980H(c)(2), as amended by §1513 and §10106 of PPACA, and as amended and renumbered by §1003 of P.L. 111-152. Additionally, an employer who is part of a group of employers treated as a single employer under §414 (b), (c), (m), or (o) of the IRC (including employees of a controlled group of corporations, employees of partnerships, proprietorships, etc., which are under common control, and employees of an affiliated service group) are treated as a single employer. For employers not in existence throughout the preceding calendar year, the determination of large employer is based on the average number of employees a firm reasonably expected to employ on business days in the current calendar year. Any reference to an employer includes a reference to any predecessor of that employer.

<sup>3</sup> IRC §4980H(c)(4).

<sup>4</sup> IRC §4980H(c)(2)(B). In addition, an employer will not be considered a large employer if its number of full-time employees exceeded 50 for 120 days or less.

Thus, in this example, the firm would be considered a “large employer,” based on a total full-time equivalent count of 51—that is, 35 full-time employees plus 16 full-time equivalents based on part-time hours.

**Table 1. Determination and Potential Application of Employer Penalty for Categories of Employees**

Employee category	How is this category of employee used to determine “large employer”?	Once an employer is determined to be a “large employer,” could the employer be subject to a penalty if this type of employee received a premium credit?
Full-time	Counted as one employee, based on a 30-hour or more work week	Yes
Part-time	Prorated (calculated by taking the hours worked by part-time employees in a month divided by 120)	No
Seasonal	Not counted, for those working less than 120 days in a year	Yes, for the month in which a seasonal worker is full time
Temporary Agency	Generally, counted as working for the temporary agency (except for those workers who are independent contractors )	Yes, for those counted as working for the temporary agency

Source: CRS analysis of P.L. 111-148 and P.L. 111-152.

## Potential Tax Penalties in 2014 on Large Employers

Regardless of whether or not a large employer offers coverage, it will be potentially liable for a penalty beginning in 2014 *only if* at least one of its full-time employees obtains coverage through an exchange and receives a premium credit (a “full-time employee” includes only those individuals working 30 hours per week or more). As shown in **Table 1**, part-time workers are *not* included in penalty calculations (even though they are included in the determination of a “large employer”). An employer will *not* pay a penalty for any part-time worker, even if that part-time employee receives a premium credit. Conversely, seasonal workers are not included in the determination of large employer. However, if an employer is determined to be a large employer, without counting its seasonal workers, it could still potentially face a penalty for each month that a full-time seasonal worker received a premium credit for exchange coverage.

Beginning in 2014, individuals who are *not* offered employer-sponsored coverage and who are not eligible for Medicaid or other programs<sup>5</sup> may be eligible for premium credits for coverage through an exchange. These individuals will generally have income between 138% and 400% of the federal poverty level (FPL).

Individuals who *are* offered employer-sponsored coverage can only obtain premium credits for exchange coverage if, in addition to the other criteria above, they also are not *enrolled* in their

<sup>5</sup> IRC §36B(c)(2)(B) and IRC §5000A(f).

employer's coverage,<sup>6</sup> and their employer's coverage meets either of the following criteria: the individual's required contribution toward the plan premium for self-only coverage exceeds 9.5% of their household income, or the plan pays for less than 60%, on average, of covered health care expenses.<sup>7</sup>

Other PPACA provisions will also affect whether full-time employees obtain premium credits for exchange coverage. For example, exchanges are required to have "screen and enroll" procedures in place for all individuals who apply for premium credits.<sup>8</sup> This means that individuals who apply for premium credits must be screened for Medicaid and the State Children's Health Insurance Program (CHIP) and, if found eligible, are to be enrolled in those programs; exchange premium credits will not be an option. This could affect whether any of an employer's full-time employees obtain premium credits in an exchange—and if so, how many.

## Penalty for Large Employers Not Offering Coverage

As previously mentioned, beginning in 2014, a large employer will be subject to a penalty if any of its full-time employees receives a premium credit toward their exchange plan. In 2014, the *monthly* penalty assessed to employers who do not offer coverage will be equal to the number of full-time employees minus 30 multiplied by one-twelfth of \$2,000 for any applicable month. After 2014, the penalty payment amount would be indexed by the premium adjustment percentage for the calendar year.<sup>9</sup>

## Penalty for Large Employers Offering Coverage

As previously mentioned, employers who do offer health coverage will *not* be treated as meeting the employer requirements if at least one full-time employee obtains a premium credit in an exchange plan because, in addition to meeting the other eligibility criteria for credits, the employee's required contribution for self-only coverage exceeds 9.5% of the employee's household income or if the plan offered by the employer pays for less than 60% of covered expenses. According to the Congressional Budget Office (CBO), about 1 million individuals per year will enroll in an exchange plan and receive a credit because their employer's plan was unaffordable.<sup>10</sup>

In 2014, the *monthly* penalty assessed to the employer for each full-time employee who receives a premium credit will be one-twelfth of \$3,000 for any applicable month. However, the total

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<sup>6</sup> §IRC §36B(c)(2)(C)(iii).

<sup>7</sup> Under §1411(e) and (f) of PPACA, after a person applies for premium credits in an exchange, the Secretary will notify the exchange whether the person is eligible because the enrollee's (or related individual's) employer does not provide minimum essential coverage or the coverage is unaffordable. The exchange must notify employers and inform them that they may be liable for a penalty. The Secretary must establish a separate appeals process for these employers, providing them with the opportunity to present information for review and must grant them access to the data used to make the determination. This process is in addition to any rights of appeal the employer may have under the IRC.

<sup>8</sup> §1311(d)(4)(F) of PPACA.

<sup>9</sup> Per IRC §4980H(c)(5) and PPACA § 1302(c)(4), the premium adjustment percentage is the national average premium growth rate.

<sup>10</sup> See the CBO March 20, 2010, estimate in a letter to the Honorable Nancy Pelosi, <http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf>. CBO did not publish an estimate of the number of people obtaining credits due to employer plans not providing "minimum value," but that number is probably small.

penalty for an employer would be limited to the *total* number of the firm's full-time employees minus 30, multiplied by one-twelfth of \$2,000 for any applicable month. After 2014, the penalty amounts would be indexed by the premium adjustment percentage for the calendar year.

Finally, those firms with more than 200 full-time employees that offer coverage must automatically enroll new full-time employees in a plan (and continue enrollment of current employees). Automatic enrollment programs will be required to include adequate notice and the opportunity for an employee to opt out.<sup>11</sup> Although most of the provisions discussed in this report are not effective until 2014, this particular provision could be in effect as soon as the Secretary promulgates regulations.

## Examples

**Table 2** shows four types of scenarios reflecting health insurance offerings of large employers (columns A through D) and whether any employer penalty applies. In all the large-employer scenarios, the employer size is assumed to remain constant, at 50 full-time employees, throughout the year. The table provides examples of the penalty consequences<sup>12</sup> based on whether the employer offers coverage and whether an employee receive a premium credit. The four scenarios are as follows:

### Scenario A

The large employer *does not offer* coverage, but no full-time employees receive credits for exchange coverage. No penalty would be assessed.

### Scenario B

The large employer *does not offer* coverage, and one or more full-time employees receive credits for exchange coverage. The annual penalty calculation is simply the number of full-time employees minus 30, times \$2,000. In this example (i.e., 50 full-time employees), the penalty would not vary if only one employee or all 50 employees received the credit; the employer's annual penalty in 2014 would be  $(50-30) \times \$2,000$ , or \$40,000.<sup>13</sup>

### Scenario C

The employer *offers* coverage and no full-time employees receive credits for exchange coverage. No penalty would be assessed.

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<sup>11</sup> §1511 of PPACA.

<sup>12</sup> **Table 2** shows calculations for penalties on these employers in 2014 on an annual basis, rather than a monthly basis as described above.

<sup>13</sup> Because the calculation of "large employer" includes part-time workers, but the penalty is only calculated based on full-time workers, not all large employers who have a full-time employee receiving a credit would actually pay a penalty. This could occur because the first 30 workers are not counted. For example, an employer with 100 part-time workers (15 hours per week) and 30 full-time workers (30+ hours per week) would be considered a large employer with 80 full-time equivalent workers. Even if one or more workers received a premium credit, the penalty would only be assessed against the number of full-time workers  $(30-30) \times \$2,000 = 0$ .

## Scenario D

The employer *offers* coverage, but one or more full-time employees receive credits for exchange coverage. The number of full-time employees receiving the credit *is* used in the penalty calculation for an employer that offers coverage. The annual penalty is the lesser of the following:

- the number of full-time employees minus 30, multiplied by \$2,000—or \$40,000 for the employer with 50 full-time employees (i.e., 50 minus 30, multiplied by \$2,000), or
- the number of full-time employees who receive credits for exchange coverage, multiplied by \$3,000.

Although the penalties are assessed on a monthly basis (with the dollar amounts above then divided by 12), this example uses annual amounts, assuming the number of affected employees is the same throughout the year.

If the employer with 50 full-time employees had 10 full-time employees who received premium credits, then the potential annual penalty on the employer for those individuals would be \$30,000. Because this is less than the overall limitation for this employer of \$40,000, the employer penalty in this example would be \$30,000.

However, if the employer with 50 full-time employees had 30 full-time employees who received premium credits, then the potential annual penalty on the employer for those individuals would be \$90,000. Because \$90,000 exceeds this employer's overall limitation of \$40,000, the employer penalty in this example would be limited to \$40,000.<sup>14</sup>

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<sup>14</sup> See previous footnote, for example of when an employer might not pay a penalty, in relation to a full-time worker receiving a premium credit.

**Table 2. Potential Annual Penalties Beginning in 2014 for Large Employers**  
 Applies to For-profit and Nonprofit Organizations

Not a large employer: Less than 50 full-time equivalent employees <sup>a</sup>	Large employer: 50 or more full-time equivalent employees <sup>a</sup>			
	Does not offer coverage		Offers coverage	
	A No full-time employees <sup>b</sup> receive credits for exchange coverage <sup>c</sup>	B 1 or more full-time employees <sup>b</sup> receive credits for exchange coverage <sup>c</sup>	C No full-time employees <sup>b</sup> receive credits for exchange coverage <sup>c</sup>	D 1 or more full-time employees <sup>b</sup> receive credits for exchange coverage <sup>d</sup>
No penalty	No penalty	Number of full-time employees <sup>b</sup> minus 30 multiplied by \$2,000  <i>(penalty is \$0 if employer has 30 or fewer full-time employees)</i>	No penalty	Lesser of:  Number of full-time employees <sup>b</sup> minus 30, multiplied by \$2,000.  Number of full-time employees <sup>b</sup> who receive credits for exchange coverage, multiplied by \$3,000.  <i>(Penalty is \$0 if employer has 30 or fewer full-time employees—because penalty is based on the lesser of the two calculations)</i>

**Source:** CRS analysis of P.L. 111-148 and P.L. 111-152.

**Notes:** Under the health insurance reform law, penalties will be assessed on a monthly basis (with the penalty amounts divided by 12). To illustrate annual amounts, this table assumes that the number of full-time employees and the number of those full-time employees receiving credits through an exchange remains constant throughout the year.

- a. For purposes of determining whether an employer is a “large employer,” the number of full-time employees (i.e., those working 30 hours per week or more) is added to the number of full-time equivalents (calculated by taking the hours worked by part-time employees in a month divided by 120).
- b. For purposes of applying the penalty amounts in this table, a full-time employee is an individual working 30 hours per week or more. Part-time workers or full-time equivalents are not included.
- c. Beginning in 2014, individuals who are *not* offered employer-sponsored coverage and who are not eligible for Medicaid or other programs may be eligible for premium credits for coverage through an exchange. Credit-eligible individuals will generally have income between 138% and 400% of the federal poverty level (FPL). The 138% FPL is 133% FPL plus an extra 5% FPL that PPACA requires to be disregarded from individuals’ income when determining Medicaid eligibility.
- d. Individuals who *are* offered employer-sponsored coverage can only obtain premium credits for exchange coverage if they first meet the regular eligibility criteria for credits (e.g., they are not eligible for Medicaid or other programs, and generally have income between 138% and 400% FPL) and meet the following additional criteria: they are not enrolled in their employer’s coverage, and their employer’s coverage either (1) requires the individual to contribute toward the self-only plan premium more than 9.5% of their household income, or (2) the plan pays for less than 60%, on average, of covered health care expenses.

## Free Choice Vouchers

An employer who offers minimum essential coverage and pays any portion of the premium must provide free choice vouchers to each qualified employee.<sup>15</sup> A qualified employee is defined as an employee whose required contribution to the employer plan, for self-only coverage, is greater than 8% and less than 9.8% of the employee's household income for the taxable year, whose household income is not greater than 400% of the FPL for the relevant family size, and who does not participate in the plan offered by the employer. Beginning after 2014, the 8% and 9.8% would be indexed by the rate of premium growth over the rate of income growth.

The voucher will be equal to the monthly amount that the employer would have contributed toward the plan for which the employer pays the largest portion of plan costs, for either self or, if elected by the employee, family coverage.

An exchange will credit the amount of a voucher to the monthly premium of an exchange plan in which the qualified employee is enrolled, and the employer will pay the exchange the credited amount. If the amount of the voucher exceeds the premium, the excess will be paid to the employee. An individual receiving a free choice voucher will not be eligible for the exchange premium credits or cost-sharing subsidies.<sup>16</sup>

No penalty will be imposed on an employer with respect to any employee who is provided with a voucher.

## Reporting and Other Requirements

The Secretary will issue regulations requiring employers to provide employees, at the time of hiring (or for current employees no later than March 1, 2013), written notice concerning (1) the existence of an exchange, including services and contact information; (2) the employee's potential eligibility for premium credits and cost-sharing subsidies if the employer plan's share of covered health care expenses is less than 60%; and (3) the employee's potential loss of any employer contribution if the employee purchases a plan through the exchange and is not eligible for a free choice voucher. Employers will be subject to this requirement beginning March 1, 2013.<sup>17</sup>

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<sup>15</sup> PPACA §10108.

<sup>16</sup> Individuals with free choice vouchers are explicitly (§10108(h)(1)) ineligible for premium credits and cost-sharing subsidies. Thus, for example, an individual who is offered employer-sponsored coverage in which the plan pays for less than 60% of covered health care expenses will initially seem eligible for premium credits. However, if the employee's required contribution for that health insurance is 9.0%, then the employer is required to provide a free choice voucher, which would make the individual ineligible for the premium credits and cost-sharing subsidies.

<sup>17</sup> PPACA §1512.

Beginning in 2014, large employers and offering employers<sup>18</sup> will have certain reporting requirements with respect to their full-time employees.<sup>19</sup> As prescribed by the Secretary, they will have to provide a return including the name, address, and employer identification number; a certification as to whether the employer offers its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; the length of any waiting period; months coverage was available; monthly premiums for the lowest-cost option; the employer plan's share of covered health care expenses; the number of full-time employees; and the name, address, and tax identification number of each full-time employee. Additionally, an offering employer will have to provide information about the plan for which the employer pays the largest portion of the costs (and the amount for each enrollment category). The employer must also provide each full-time employee with a written statement showing contact information for the person required to make the above return, and the specific information included in the return for that individual. The Secretary will work to provide coordination with other requirements, and an employer may enter into an agreement with a health insurance issuer to provide necessary returns and statements.

## Conclusion

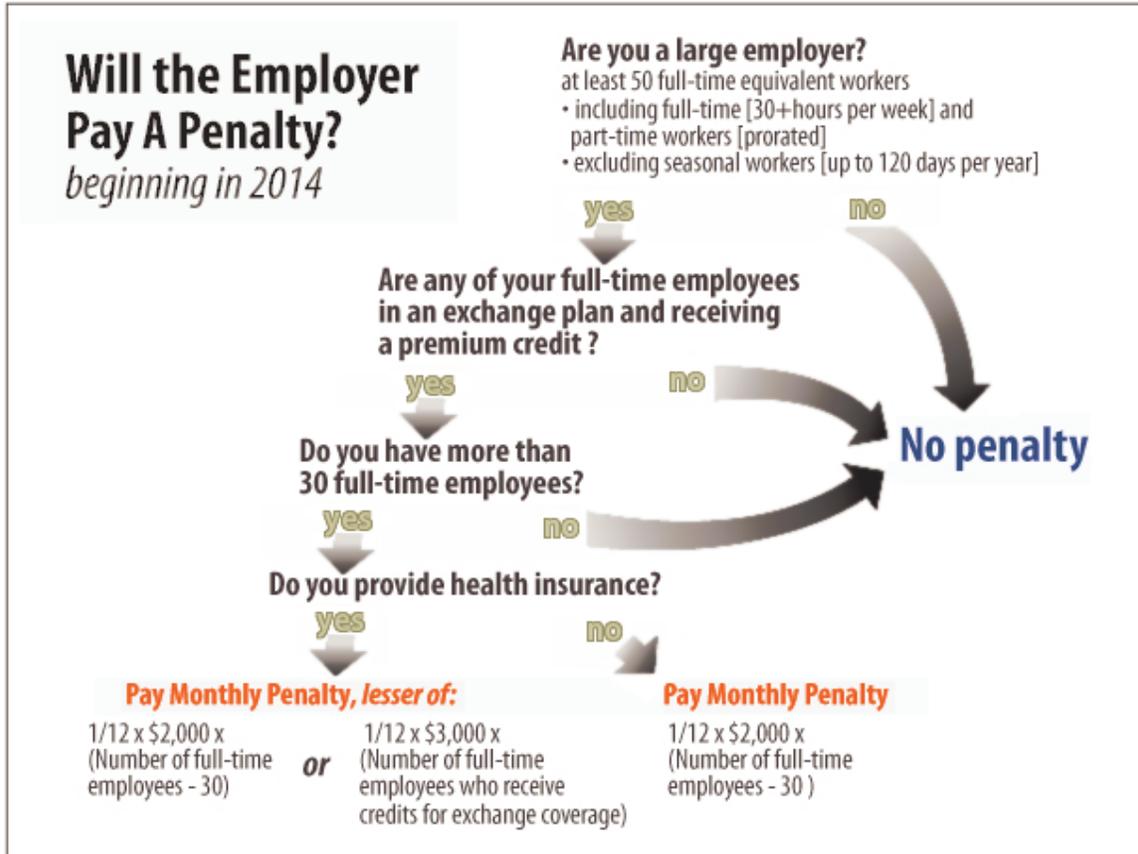
Finally, **Figure 1** displays the employer requirements that may result in an employer having to pay a penalty for one or more months. Only large employers who have at least one full-time worker receiving a premium credit through an exchange plan and employ least 30 full-time workers may pay a penalty, whether or not they provide health insurance.

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<sup>18</sup> An offering employer is one who offers minimum essential coverage through an employer sponsored plan and pays for a portion of the costs. Reporting requirements apply to these employers, regardless of size, only if the required contribution for self-only coverage by any employee exceeds 8% of wages. This is required because individuals whose *household income* exceeds 8% of wages are exempt from the individual mandate and may be eligible for free choice vouchers. However, an employer would only have knowledge of the individual's wages, not his or her household income. Because this reporting requirement is linked to wages (and not household income), it is a first step in determining if an individual is exempt from the individual mandate and/or eligible for the free choice voucher.

<sup>19</sup> PPACA §1502.

Figure 1. Determining if an Employer Will Pay a Penalty



Source: CRS analysis of P.L. 111-148 and P.L. 111-152.

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