Wespath
BENEFITS | INVESTMENTS

Wespath Benefits and Investments
1901 Chestnut Avenue
Glenview, IL 60025-1604
wespath.org

August 28, 2015

Health Care Reform—Employer Shared Responsibility Rule
Part 4—The Penalties

Under the Employer Shared Responsibility Rule (Rule) of the Patient Protection and Affordable Care Act (ACA), an Applicable Large Employer (i.e., an employer with at least 50 Full-time and Full-Time Equivalent Employees (collectively "FTEEs") potentially is subject to two types of penalties under §4980H of the Internal Revenue Code:

- No Coverage Penalty, or
- Inadequate Coverage Penalty.

The employer would not pay both penalties.

Important:

- Penalties under the Employer Shared Responsibility Rule will not apply to small employers (those with fewer
  than 50 FTEEs and that are not part of a Controlled Group that is an Applicable Large Employer, as explained in **Parts 2A** and **2B**); penalties may only apply to Applicable Large Employers (as explained in **Part 1**).
- Penalties do not apply with respect to part-time employees, even though they are counted in assessing whether an employer is subject to the Rule based on number of FTEEs.
- A Premium Tax Credit (PTC) is a federal subsidy based on low income, to be used toward the purchase of health insurance through an ACA-established Health Insurance Marketplace.

No Coverage Penalty

The No Coverage Penalty applies if an Applicable Large Employer fails to provide minimum essential health coverage to substantially all full-time employees and their children (up to age 26), and one (even just one) or more of those full-time employees receives a PTC for coverage through a Health Insurance Marketplace (also called "Exchanges"). Minimum essential coverage is defined very broadly in the ACA. Most employer-provided group health coverage will meet the definition. You can read more about minimum essential coverage **here**.

The No Coverage Penalty is calculated as follows:

- **For 2015:** **$2,000 x (the number of full-time employees employed by the Applicable Large Employer
  minus 80)**

4569/041525

- **For 2016 and After: $2,000 x (the number of full-time employees employed by the Applicable Large Employer minus 30)**

The ACA penalties are applied and calculated on a monthly basis. Therefore, technically, the No Coverage Penalty
is 1/12th of the product above each month the penalty applies.

> **Example:** Conference A has 36 Full-Time Employees and 30 Part-Time Employees (PTEs) who average 80 hours of service per month in 2015. For the ACA Rule, Part-Time Employees' hours are calculated toward total FTEEs.
>
> **30 PTEs x 80 avg. hrs. ÷ 120 = 20 Full-Time Equivalent Employees**
>
> Conference A's 30 part-time employees are counted as 20 Full-Time *Equivalent* Employees.
>
> Therefore, Conference A has a total of 56 FTEEs (36 who work full-time + 20-Full-Time Equivalents who work part-time).
>
> Conference A is an Applicable Large Employer for 2016 because it has at least 50 FTEEs in 2015.
>
> If Conference A offers no health coverage to its Full-Time Employees[1], the conference is subject to
> the No Coverage Penalty (if even only one[2] Full-Time Employee receives a PTC). The No Coverage Penalty for 2016 would be approximately $12,000. This penalty is based on 36 Full-Time Employees (Part-Time Employees are not counted) minus the first 30, so the No Coverage Penalty is assessed on 6 FTEs.
>
> [**6 x $2,000 = $12,000**]

Note that Part-Time Employees *do not factor into the penalty calculation*, even though they *do factor into the FTEE count* for determining whether the employer is an Applicable Large Employer subject to the Rule. The No Coverage Penalty would only apply if one or more Full-Time Employees receives a PTC (but would not necessarily apply if one or more part-time employees receive a PTC). Conference A could also be subject to the No Coverage Penalty if a dependent child (under age 26) of a Full-Time Employee received a PTC.

Safe Harbor: An Applicable Large Employer is treated as having offered coverage to "all" Full-Time Employees if coverage is offered to 95% of its Full-Time Employees. *For 2015 only*, this safe harbor applies if the Applicable Large Employer offers coverage to 70% of its Full-Time Employees. This provision may prevent an employer from being subject to the No Coverage Penalty for accidentally failing to provide coverage to a small group of Full-Time Employees. *However, the safe harbor does not apply to the Inadequate Coverage Penalty described below.*

---

[1] The No Coverage Penalty does not apply to part-time employees, so the conference or other employer will not be assessed penalties for not offering coverage to part-time employees.

[2] If all of an employer's employees have household income greater than 400% of FPL, then there would not be a No Coverage Penalty—even if the employer provided no coverage.

Inadequate Coverage Penalty

The second type of penalty applies if an Applicable Large Employer provides minimum essential coverage to Full-Time Employees, but that coverage is either not Affordable to some Full-Time Employees or does not provide Minimum Value (as described below), *and* one or more Full-Time Employee qualifies for a PTC. The Inadequate Coverage Penalty is capped at the value of the No Coverage Penalty described above (so no employer will pay more than the No Coverage Penalty).

PTCs are available only to individuals whose household income is between 100% and 400% of federal poverty level (FPL) *and* who also have no offer of employer-provided minimum essential health coverage or their employer has offered them coverage that is not *Affordable* or does not cover *Minimum Value*. In 2015, 100% of FPL is approximately $11,770 for an individual and $24,250 for a family of four; 400% of FPL is approximately $47,080 for an individual and $97,000 for a family of four. FPL is updated annually by the U.S. Department of Health and Human Services (HHS). Affordable coverage and Minimum Value for the purposes of ACA are described below. *Clergy housing is not included when calculating household income.*

The Inadequate Coverage Penalty is calculated as follows:

> **$3,000 x number of Full-Time Employees who receive a PTC for health coverage on an Exchange**

Again, these penalties are applied and calculated on a monthly basis. The IRS has answered questions about how to calculate potential penalties. Read the IRS's response to **questions 24 through 26** to learn more about these penalties.

Affordable Coverage and Minimum Value

For an Applicable Large Employer to avoid the Inadequate Coverage Penalty, the employer must:

- Offer *minimum essential coverage* to substantially all Full-Time Employees and their dependent children (up to age 26), and
- Offer coverage that meets *Affordable* and *Minimum Value* requirements.

Affordable Coverage: Coverage is considered *Affordable* if employee-only coverage [the cost to the employee of individual (also called self-only or single) coverage] does not exceed 9.56% of the employee's *household income*.
If an employee is required to pay more than 9.56% of his or her household income for individual coverage under the employer's plan, he or she can opt to purchase coverage on an Exchange (state or federal Health Insurance Marketplace) and receive a PTC (if his or her household income is between 100% and 400% of FPL). If the employer coverage costs the employee less than 9.56% of household income, he or she is ineligible for a PTC.

Because employers are unlikely to know an employee's household income, the IRS has issued three safe-harbor methods that employers can use to determine affordability based on information the employer has available.

- *Method 1* allows the employer to rely on the employee's income reported on tax form *W-2*. As long as the cost
  of coverage to an employee under an employer's plan does not exceed 9.56% of *W-2* compensation (determined employee-by-employee at the end of the year), an Applicable Large Employer will not be subject to the Inadequate Coverage Penalty even if the employee receives a PTC.
- *Method 2* is a "rate of pay" method. An Applicable Large Employer can take the hourly rate of pay for an employee (at the beginning of the plan year) and multiply that rate by 130 hours per month. As long as the cost of coverage for the employee does not exceed 9.56% of this sum, the Applicable Large Employer would not be subject to the Inadequate Coverage Penalty if the employee receives a PTC.
- *Method 3* is based on the federal poverty level (FPL). Under this method, coverage from an Applicable Large Employer is deemed affordable if the cost of coverage for an employee does not exceed 9.56% of FPL for a single person. For example, in 2015 that would be 9.56% of $11,770 or $1,125.21 annually (this would be $93.76 per month).

> **Example:** Local Church B is an Applicable Large Employer with 60 FTEEs in 2015. Local Church B offers health coverage to all its Full-Time Employees and their dependent children. However, Local Church B charges all Full-Time Employees $200 per month as the employee share of the premium for self-only coverage. Full-Time Employee X has a household income of $27,000 and *W-2* pay of 24,000, and Full-Time Employee Y has a household income of $21,000 but *W-2* pay of $26,000. Employees X and Y both receive a PTC to purchase Exchange coverage.
>
> **Employee X: employee share of premium ($2,400) is 10% of *W-2* pay ($24,000)**
>
> **Employee Y: employee share of premium ($2,400) is 11.4% of household income ($21,000)**
>
> The IRS assesses an Inadequate Coverage Penalty for Local Church B of $6,000 **[$3,000 x 2 employees eligible for PTCs**). Local Church B can contest the assessment related to Employee Y using the *W-2* income safe harbor ($200 x 12 = $2,400 is less than 9.56% of Employee B's *W-2* income of $26,000 (which would be $2,485.60). However, Local Church B will have to pay the $3,000 Inadequate Coverage Penalty related to Employee X.

Affordable coverage is described in more detail **here**.

Minimum Value: Employer-provided health coverage must provide at least *Minimum Value*, as defined by ACA.
A plan meets the Minimum Value definition if the plan covers (pays for) 60% of the cost of covered benefits. This determination can be made by an actuary, by using the IRS' Minimum Value calculator or by comparing the benefits offered under the plan to a checklist published by the IRS. Minimum Value is described in more detail **here**.

Most local churches will need to obtain Minimum Value certifications from their annual conference, as relates to full-time clergy coverage, and either the annual conference or their insurance company as relates to coverage of lay employees. Few local churches have their own self-insured plans.

Paying Penalties

The IRS will impose penalties by contacting the Applicable Large Employer at the end of the year with an estimated penalty amount based on employees associated with the employer. Employers will have the opportunity to respond to and appeal the initial determination if they believe it is inaccurate. The Exchanges or IRS may notify employers when an employee receives a PTC from an Exchange. Exchanges may ask employers for additional information about employees at certain times. The IRS has not yet issued specific guidance on how employers will be notified of preliminarily assessed penalties.

Questions and Information

If you have questions or would like additional information, please send your inquiries to **healthcarereform@gbophb.org**. General information about health care reform is available from the federal government at **www.healthcare.gov**.

Disclaimer: *These updates are provided by Wespath as a general informational and educational service to its plan sponsors, the annual conferences, plan participants and friends across The United Methodist Church. The updates should not be construed as, and do not constitute, legal advice nor accounting, tax, or other professional advice or services on any specific matter; nor do these messages create an attorney-client relationship. Readers should consult with their counsel or other professional advisor before acting on any information contained in these documents. Wespath expressly disclaims all liability in respect to actions taken or not taken based on the contents of this update.*

© 2025 Wespath