Legislative Update

Pay or Play - Penalties for Failing to Offer Dependent Coverage

Provided by Kapnick Insurance Group

Quick Facts:

An applicable large employer may owe a penalty if:

- The employer does not offer minimum essential health coverage to all full-time employees (and dependents); and
- At least one full-time employee receives a subsidy for purchasing coverage through an Exchange.

Whether a full-time employee's dependent enrolls through an Exchange and receives a subsidy does not affect an employer's liability for penalties. Transition relief for offering dependent coverage in 2014 applies.

The IRS released FAQs addressing the consequences under the employer shared responsibility rules for applicable large employers that do not offer dependent coverage.

Beginning in 2015, the Affordable Care Act (ACA) generally requires applicable large employers to offer minimum essential health coverage to their full-time employees (and their dependents) or pay a penalty. These employer mandate penalties are known as "shared responsibility" or "pay or play" penalties. On May 13, 2014, the Internal Revenue Service (IRS) released **FAQs** addressing consequences under the employer shared responsibility rules for applicable large employers that offer minimum essential health coverage to all full-time employees, but do not offer such coverage to dependents.

Liability for Employer Shared Responsibility Penalties

An applicable large employer is generally subject to an employer shared responsibility penalty if it either: (1) fails to offer minimum essential coverage to its full-time employees (and their dependents) and at least one full-time employee receives a subsidy to help pay for Exchange coverage, or (2) offers minimum essential coverage to its full-time employees (and their dependents) and at least one full-time employee receives a subsidy to help pay for Exchange coverage. For purposes of the shared responsibility penalty, the definition of "dependent" means a child of a full-time employee who has not attained age 26; it does not include spouses (i.e., to comply with the employer shared responsibility rules regarding dependents, an employer only needs to offer minimum essential coverage to a full-time employee's child who has not attained age 26, not his or her spouse).

An employer will potentially be liable for an employer shared responsibility penalty only if a **full-time employee**:

- enrolls in coverage through an Exchange; and

- receives a subsidy to help pay for the Exchange coverage.

If one or more dependents of a full-time employee enrolls through an Exchange and receives a subsidy, it does **not** affect that applicable large employer's liability. Generally employer shared responsibility liability arises because the coverage offered is either not affordable or it does not provide minimum value with respect to a full-time employee who enrolls in Exchange coverage and receives a subsidy toward that coverage. No penalty is imposed if dependent coverage is not affordable or fails to provide minimum value (i.e., the FAQ does not specifically require dependent coverage to be affordable or subsidized at the same level as full-time employee coverage).

Note: If an applicable large employer offers minimum essential health coverage to its full-time employees and their dependents, and such coverage is both affordable and provides minimum value, those employees and dependents generally will not be eligible for a subsidy. There are some exceptions (e.g., a full-time employee is unintentionally not covered).

Transition Relief for Offering Dependent Coverage in 2014 and 2015

In addition, under transition relief provided in the employer shared responsibility final regulations, an employer that **takes steps during its 2014 plan year toward offering dependent coverage** will not be subject to an employer shared responsibility penalty for failing to offer dependent coverage for that plan year.

This extended transition relief applies to employers for the 2015 plan year for plans under which:

- Dependent coverage is not offered;
- Dependent coverage that does not constitute minimum essential coverage is offered; or
- Dependent coverage is offered for some, but not all, dependents.

The transition relief is not available to the extent that an employer previously offered dependent coverage during either the 2013 or 2014 plan year and subsequently dropped that offer of coverage. The transition relief, as extended, applies only for dependents who were without an offer of coverage from the employer in both the 2013 and 2014 plan years, and only if the employer takes steps during the 2014 or 2015 plan year (or both) to extend coverage to dependents not offered coverage during the 2013 or 2014 plan year (or both).

For periods on or after January 1, 2016 (or, if applicable, for any period after the last day of the 2015 plan year) the transition relief for 2015 generally is not applicable.

More Information

Please contact Kapnick Insurance Group for more information on the ACA's employer shared responsibility rules.

Source: Internal Revenue Service