



The Continuing Complexity of Employer Responsibilities

Presented on:

Tuesday, February 19, 2013

CenterState CEO

Presented by:

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Presentation to CenterState CEO

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- Health Care Reform Act – Latest News regarding Employer Responsibility
- Retirement Plan Problems - Newly Revised IRS Correction Procedures





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Employer Responsibilities Health Care Reform





2012 Changes Already in Place

Employers were required to provide preventive health services for women without cost-sharing by August 1, 2012.





Summaries of Benefits & Coverage

- For plan years beginning on and after September 23, 2012, plans were required to provide SBCs with annual enrollment materials and enrollment materials for new enrollees
- SBC must include coverage description, coverage exceptions, cost-sharing provisions, and renewability provisions






Form W-2 Reporting


- Beginning with the 2012 tax year, employers were required to include value of health benefits on W-2s
- Only applied to employers issuing 250 or more Form W-2s
- Value of group health plan benefits
 - Fully insured = amount of premium charged
 - Self-funded = 100% of COBRA premium





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Flexible Spending Account Limit


- Beginning in 2013, the maximum dollar limit for an employer's FSA plan is \$2,500 annually
- Plan Documents must be amended to reflect this limit by December 31, 2014




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Notice of State Exchange

- Employer is required to provide employees with a notice informing employees of the existence of a state health insurance exchange and contact information for the exchange
- Original notice date – March 1, 2013
- Timing extended by DOL notice issued January 24, 2013. Deadline probably late summer or fall 2013.





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Health Care Reform Employer Shared Responsibility Regulations





Employer Shared Responsibility Regulations

- Employer “Pay or Play” Mandate
 - Beginning in 2014, Certain Employers must offer a minimum level of affordable health care coverage or pay a penalty
 - Affordable Care Act added a new section to the Internal Revenue Code – 4980H providing for the penalties





Employer Shared Responsibility Regulations

Two Employer “Pay or Play” Penalties

- Penalty if no health coverage *or*
 - Health coverage is offered but either unaffordable or not minimum value *and*
 - Full time employee obtains premium tax credit for purchasing health insurance on an exchange





Who is an “Applicable Large Employer”?

- Employer with 50 or more full-time employees or full-time equivalent employees (FTEs)
- Aggregation of employers – controlled group and affiliated service group rules apply
- Special rule for new employers
- Exception for seasonal workers





Counting employees for Large Employer Status

- Full-time employee is an individual who on average is employed for 30 or more hours per month
- Hours of Service definition follows DOL rules counting all hours *paid* not worked
- (FTEs) determined by adding hours of all part-timers within a month and dividing by 120





Counting Employees Cont'd:


- Common Law definition followed
- Sole proprietors, partners in a partnership, 2% shareholders in S Corp are not employees
- Determination made in preceding year for following calendar year (2013 employee count controls 2014 status)






Examples





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Controlled Group Example


For 2013 and 2014, corporation P owns 100 percent of all classes of stock of corporations S and T. For every calendar month in 2013, P has 10 full-time employees, S has 40 full-time employees and T has 60 full-time employees. P, S, and T are a controlled group of corporations. Because P, S and T have a combined total of 110 full-time employees during 2013, they are each potentially liable for a Pay or Play penalty in 2014.





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Seasonal Worker Exception Example


An employer employs 40 full-time employees for all of 2013. In addition, the employer also has 80 seasonal full-time employees who work from September through December 2013. But, since the employer's workforce equaled or exceeded 50 full-time employees (including seasonal workers) for no more than four calendar months in 2013, and the number of full-time employees would be fewer than 50 during those months if seasonal workers were disregarded, the employer is not an applicable large employer for 2014.





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Employer Penalties





Possible Employer Penalties

- No coverage penalty
- Affordability Penalty
- Penalties based upon Full-Time employees (FTE's don't count)





No Coverage Penalty

- Penalty equal to number of full-time employees (minus 30 full-time employees) multiplied by \$2,000
- Penalty applicable if one full-time employee receives a premium tax credit for purchasing coverage on an exchange
- Penalty is calculated on a monthly basis






Affordability Test


- Must provide "minimum essential coverage" to all Full-Time employees (or at least 95% of full-time employees and their dependents) that is **affordable** and provides **minimum value**
 - Affordable = does not exceed 9.5% of employee's household income
 - Minimum value = plan covers at least 60% of costs




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Affordability Safe Harbors

- Form W-2 Safe Harbor
- Rate of Pay Safe-Harbor
- Federal Poverty Line Safe Harbor


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Penalty for Failure of Affordability Test

- Penalty equal to number of full-time employees who receive a premium tax credit for purchase of coverage on an exchange multiplied by \$3,000
- Penalty is calculated on a monthly basis
- Penalty cannot exceed the penalty amount under the coverage test


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More Information Needed


- Minimum Value calculator from IRS and HHS
- Required automatic enrollment for large employers (200 Full-Time employees)
- Nondiscrimination rules



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Correcting Retirement Plan Problems


DOL Correction Methods
IRS Correction Methods



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Changing World of Employee Benefit Compliance

- IRS and DOL Correction Programs have changed the Employee Benefit Audit Climate
- Electronic Filing Makes Errors Easier to Spot
- Due to Economic Downturn Benefit Plan Investigators are Attorneys



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DOL Correction Programs

- Delinquent Filer Voluntary Compliance Program (DFVCP)
 - Allows correction of late or unfiled Form 5500 filings
- Voluntary Fiduciary Correction (VFC) Program
 - Provides plan sponsors the opportunity to correct fiduciary breaches

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Delinquent Filer Voluntary Compliance Program (DFVCP)

- Recently updated by DOL
- Reduced penalties of \$750 to \$4,000 instead of potential \$15,000 - \$30,000 penalties
- All filings must now be made electronically with EFAST 2
- Still not available for one participant plans – Form 5500EZ filers

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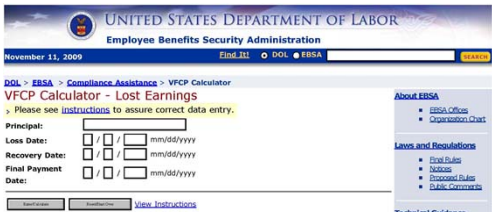
Voluntary Fiduciary Correction (VFC) Program


- Most often used to report late deposit of 401K elective deferrals
- Also employed to correct prohibited transactions
- No self correction
- Correction must include lost earnings

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DOL Online Calculator


<http://askebsa.dol.gov/VFCPCalculator/WebCalculator.aspx>






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IRS Correction Program EPCRS







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IRS Correction Program (EPCRS)

- What is EPCRS?
 - Employee Plans Compliance Resolution System
 - Composed of three programs: SCP, VCP, Audit CAP
 - Goal is to correct plan issues so that plans can stay qualified (avoid adverse tax consequences of disqualification)






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Threats to Plan Qualification

- Plan Document Failure
- Operational Failure – not following the terms of the plan
- Demographic Failure – nondiscrimination or participation requirement violations
- Employer Eligibility Failure – adoption of 403(b) plan by an ineligible employer





EPCRS Correction Principles

- Full correction includes all taxable years, whether or not the taxable year is closed
- Correction method should restore the plan and its participants to the position they would have been in had the failure not occurred
- The correction method should be reasonable and appropriate for the failure





EPCRS Components

- **Self Correction Program (SCP)**
 - No notification to IRS and no fees or penalties
 - Not available for Plan document failure
- **Voluntary Correction Program (VCP)**
 - IRS Submission and payment of VCP fee
- **Audit Closing Agreement Program (Audit CAP)**
 - Errors found during an IRS examination with fees greater than those available under VCP, but less than the impact of the plan losing its tax benefits





EPCRS What's New in 2013?

- EPCRS Recently Updated by Revenue Procedure 2013-12
 - Widens the door for 403(b) plan corrections
 - Creates a new definition of overpayment and provides methods for correcting overpayment errors, especially for underfunded DB plans
 - Presents new forms for VCP submissions





EPCRS What's New in 2013?

- EPCRS can be used to correct 403(b) document and operational failures
 - Failure to adopt written plan document according to 403(b) regulations corrected by adoption of amendment retroactive to January 1, 2009
 - Correction of 403(b) plan matters to follow general guidelines for qualified plans





EPCRS What's New in 2013?

- EPCRS overpayment correction methodology
 - DC plans – correction of distribution not permitted under the Code or plan terms
 - DB plans - allows correction of Section 436 distribution errors
 - Earnings must be restored with overpayment
 - Employer contribution required in certain cases






VCP Submission Fees

- Fees generally based on the number of participants in a plan:
 - 0-20 \$750
 - 21-50 \$1000
 - 501-1000 \$8000
- Fee for failure to adopt a 403(b) plan document is temporarily reduced by 50% if:
 - The only failure included in the submission was the failure to adopt the plan; and
 - The submission is made by end of 2013






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EPCRS

What's Not Addressed


- Correction of Automatic enrollment issues
- Failure to provide safe harbor notice
- Roth contribution errors





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Resources

- Overview of EPCRS:
 - <http://www.irs.gov/Retirement-Plans/Another-Way-to-Spell--Relief--E-P-C-R-S-Expanded-Article>
- Fix-It Guides:
 - <http://www.irs.gov/Retirement-Plans/Plan-Sponsor/Fix-It-Guides---Common-Problems-Real-Solutions>
- Submission Kits for failure to timely adopt plan document:
 - 403(b) Plans: http://www.irs.gov/pub/irs-tege/vcp_submission_kit_403b.pdf






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Questions and Answers

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Firm Profile

Bousquet Holstein PLLC is a versatile law firm representing clients across many industries. The firm's clientele is comprised of businesses and individual clients for whom we provide legal advice and counsel on a broad range of matters covering thirty practice areas.

Our attorneys are counselors, strategists, and advocates whose goal is to develop a long-term relationship with each of our clients - one that is based on the trust that develops when a law firm understands the client's business and objectives, anticipates the client's needs, and provides prompt, high-quality, and consistently valuable service. An in-depth understanding of the economics of business transactions is one of the firm's defining characteristics. We enthusiastically address the challenges presented by new projects and have embraced new areas of the law as we anticipate our clients' needs for us to master emerging legal trends.

We are organized in practice groups - flexible collections of attorneys and other professionals who bring different facets of expertise to the particular area of practice. This interdisciplinary team approach allows us to achieve creative and complete solutions for our clients. Our professional staff does not fit into any preconceived mold. We have an extraordinarily talented group of individuals, each of whom has a passion for his or her work and for the connections made with our clients. In addition to a strong commitment to our practice, our professionals believe that it is their responsibility to contribute to our community and make it a better place for all to live. The commitments we have collectively and individually made to our community are an integral part of who we are.

For more information about our firm, please visit our website at:
www.bhlawpllc.com.



Bousquet Holstein Practice Areas

Agriculture
Alternative Dispute Resolution
Appellate Advocacy
Banking and Financial Institutions
Bankruptcy
Brownfields
Business Transactions
Economic Development Incentives
Elder Law & Special Needs Planning
Employee Benefits & ERISA
Employment and Discrimination
Energy
Environmental, Land Use, and Zoning
Estate Planning & Administration
Equipment Leasing and Financing
Government Relations
Health Care
Immigration & Naturalization
Intellectual Property
Litigation
Matrimonial
Mergers and Acquisitions
Municipal Representation
Not-For-Profit Organizations
Professional Practices
Real Estate
Tax Planning and Advocacy
Telecommunications
Trusts
Venture Capital and Private Placement

Employee Benefits Practice Group

Employee Benefits involves many disciplines. Transactions, such as the purchase or sale of a business, or the drafting of a will or estate plan, often raise employee benefits questions. The formation and operation of many businesses – large and small – requires multiple employee benefit decisions. To understand all of the consequences of a benefits decision, an attorney must have a working knowledge of benefit plan design and operation, accounting practices, employment relations, income taxation, and retirement and succession planning.

The Employee Benefits Practice Group is fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.

Often, employers must choose from a complex array of qualified (tax-favored) and non-qualified retirement and deferred compensation plans.

Our expertise covers all aspects of retirement plans, including qualified and non-qualified pension and profit-sharing plans such as 401(k) plans, ESOPs, and "age weighted" plans; cafeteria and "flex" plans; welfare benefit plans; and "Top Hat" and other executive compensation plans. As independent advisors, we help our clients evaluate plan designs so that they can choose the benefit plan best suited to their needs and budgets.

We guide our clients with regard to regulatory compliance and assist those clients facing compliance issues, often employing the government-provided correction programs, EPCRS (IRS's correction program) and VFC (the Department of Labor's correction program). We have represented clients before the IRS, DOL and PBGC in audits involving qualified plans, welfare benefit plans and other compliance issues.

We have extensive experience advising clients, at both the employer level and the participant level, with regard to the drafting and approval of Qualified Domestic Relations Orders (QDROs).

Our Employee Benefits Practice Group works closely with the Business Transactions and Mergers and Acquisitions Practice Groups to advise clients of the benefits issues involved with mergers as well as stock and asset transactions.

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Practice

Sharon is a member of the firm practicing in the areas of employee benefits, trusts and estates, mergers and acquisitions, and tax planning and advocacy, including federal and state fiduciary tax planning and preparation.

Sharon's experience includes advising clients with regard to the establishment, administration, and termination of qualified retirement plans, cafeteria plans, and other fringe benefit plans, and representing clients in connection with Internal Revenue Service, Pension Benefit and Guaranty Corporation, and Department of Labor matters. She has also acted as co-counsel on ERISA litigation matters.

Sharon assists clients in all aspects of the estate planning process. She has extensive experience in the planning and preparation of wills and trusts. In addition, she assists clients in property transfers, changes in beneficiary designations, and estate administration.

Prior to obtaining her law degree, Sharon was the Director of Employee Benefits for Green & Seifter, Certified Public Accountants, PLLC, where she supervised all aspects of plan compliance and annual administration for over 250 employee benefit plans, including cafeteria plans, defined benefit plans, defined contribution plans, 401(k) plans and employee stock ownership plans (ESOPs). Previously, Sharon has been an instructor in the Certified Employee Benefits Specialist Program sponsored by the Wharton School of Business and International Foundation of Employee Benefits. She is also a frequent lecturer for the local bar associations and appears periodically as a panelist on Financial Fitness on WCNY.

Professional and Community Involvement

- Adjunct at SU Law School – Pension and Employee Benefits Law
- New York State Bar Association
- Onondaga County Bar Association
- Central New York Women's Bar Association
- Loretto Independent Living Services, Inc (PACE CNY), Board of Directors, Past Chair of Board of Trustees
- St. Joseph's Hospital Health Center, Board of Trustees
- New York Employee Benefits Conference, Past Director

Practice Areas

Employee Benefits
Mergers and Acquisitions
Tax Planning and Advocacy
Trusts and Estates

Education

J.D., Syracuse University of
College Law, 1992

M.P.A., Maxwell School of
Syracuse University, 1979

B.A., University of Notre Dame,
1974

Admissions

- New York

Sharon A. McAuliffe continued...

Recent Publications and Presentations

October 2012

- Dividing Retirement Benefits in a Matrimonial Action
- CLE – Onondaga County Bar Assn.

September 2012

- The Continuing Complexity of Employer Responsibilities – Employee Benefits Update

May 2012

- Matrimonial and Family Law Basics and Qualified Domestic Relations Orders (QDROs)
- CLE - CNY Women's Bar Association

December 2011

- Possible Plan Amendment Required by December 21, 2011

September 2011

- The Expanding Horizon of Employer Responsibilities – Employee Benefits Update

June 2011

- What Plan for Which Client? – Financial Planners Association of CNY

October 2010

- Update on Health Care Reform - W-2 Reporting Reprieve
- IRS Launches Compliance Check Program for 401K Plans
- The Changing Landscape of Employee Benefits - 2010 Update

February 2010

- 2010 Estate Planning Update

November 2009

- Employee Benefits Planning in Troubled Times – A 2009 Update

June 2009

- Kennedy v. Dupont Savings & Investment Plan: Waiver of Retirement Benefits in Light of a Recent Supreme Court Decision, NYSBA Family Law Review

March 2009

- The ABCs of Retirement Benefits and Health Insurance in Separation and Divorce

July 2008

- Employee Benefits Update

October 2007

- Year End Benefits Plan Compliance, New York Employee Benefits Annual Conference

September 2007

- Unexpected Employee Benefits Liabilities Cause Potentially Devastating Losses



Reference Materials



Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act

December 28, 2012

Basics of the Employer Shared Responsibility Provisions

1. What are the Employer Shared Responsibility provisions?

Starting in 2014, employers employing at least a certain number of employees (generally 50 full-time employees and full-time equivalents, explained more fully below) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act). Under these provisions, if these employers do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees, they may be subject to an Employer Shared Responsibility payment if at least one of their full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges.

To be subject to these Employer Shared Responsibility provisions, an employer must have at least 50 full-time employees or a combination of full-time and part-time employees that is equivalent to at least 50 full-time employees (for example, 100 half-time employees equals 50 full-time employees). As defined by the statute, a full-time employee is an individual employed on average at least 30 hours per week (so half-time would be 15 hours per week).

2. When do the Employer Shared Responsibility provisions go into effect?

The Employer Shared Responsibility provisions generally go into effect on January 1, 2014. Employers will use information about the employees they employ during 2013 to determine whether they employ enough employees to be subject to these new provisions in 2014. See question 4 for more information on determining whether an employer is subject to the Employer Shared Responsibility provisions.

3. Is more detailed information available about the Employer Shared Responsibility provisions?

Yes. Treasury and the IRS have [proposed regulations](#) on the new Employer Shared Responsibility provisions. Comments on the proposed regulations may be submitted by mail, electronically, or hand-delivered, and are due by March 18, 2013.

Which Employers are Subject to the Employer Shared Responsibility provisions?

4. I understand that the employer shared responsibility provisions apply only to employers employing at least a certain number of employees? How does an employer know whether it employs enough employees to be subject to the provisions?

To be subject to the Employer Shared Responsibility provisions, an employer must employ at least 50 full-time employees or a combination of full-time and part-time employees that equals at least 50 (for example, 40 full-time employees employed 30 or more hours per week on average plus 20 half-time employees employed 15 hours per week on average are equivalent to 50 full-time employees). Employers will determine each year, based on their current number of employees, whether they will be considered a large employer for the next year. For example, if an employer has at least 50 full-time employees, (including full-time equivalents) for 2013, it will be considered a large employer for 2014.

Employers average their number of employees across the months in the year to see whether they meet the large employer threshold. The averaging can take account of fluctuations that many employers may experience in their work force across the year. For those employers that may be close to the 50 full-time employee (or equivalents) threshold and need to know what to do for 2014, special transition relief is available to help them count their employees in 2013. See question 19 below for information about this transition relief. The proposed regulations provide additional information about how to determine the average number of employees for a year, including information about how to take account of salaried employees who may not clock their hours and a special rule for seasonal workers.

5. If two or more companies have a common owner or are otherwise related, are they combined for purposes of determining whether they employ enough employees to be subject to the Employer Shared Responsibility provisions?

Yes, consistent with longstanding standards that apply for other tax and employee benefit purposes, companies that have a common owner or are otherwise related generally are combined together for purposes of determining whether or not they employ at least 50 full-time employees (or an equivalent combination of full-time and part-time employees). If the combined total meets the threshold, then each separate company is subject to the Employer Shared Responsibility provisions, even those companies that individually do not employ enough employees to meet the threshold. (The rules for combining related employers do not apply for purposes of determining whether an employer owes an Employer Shared Responsibility payment or the amount of any payment). The proposed regulations provide information on the rules for determining whether companies are related and how they are applied for purposes of the Employer Shared Responsibility provisions.

6. Do the Employer Shared Responsibility provisions apply only to large employers that are for-profit businesses or to other large employers as well?

All employers that employ at least 50 full-time employees or an equivalent combination of full-time and part-time employees are subject to the Employer Shared Responsibility provisions, including for-profit, non-profit and government entity employers.

7. Which employers are not subject to the Employer Shared Responsibility provisions?

Employers who employ fewer than 50 full-time employees (or the equivalent combination of full-time and part-time employees) are not subject to the Employer Shared Responsibility provisions. An employer with at least 50 full-time employees (or equivalents) will not be subject to an Employer Shared Responsibility payment if the employer offers affordable health coverage that provides a minimum level of coverage to its full-time employees.

8. Are companies with employees working outside the United States subject to the Employer Shared Responsibility provisions?

For purposes of determining whether an employer meets the 50 full-time employee (or full-time employees and full-time employee equivalents) threshold, an employer generally will take into account only work performed in the United States. For example, if a foreign employer has a large workforce worldwide, but less than 50 full-time (or equivalent) employees in the United States, the foreign employer generally would not be subject to the Employer Shared Responsibility provisions.

9. Are companies that employ US citizens working abroad subject to the Employer Shared Responsibility provisions?

A company that employs U.S. citizens working abroad generally would be subject to the Employer Shared Responsibility provisions only if the company had at least 50 full-time employees (or the equivalent combination of full-time and part-time employees), determined by taking into account only work performed in the United States. Accordingly, employees working only abroad, whether or not U.S. citizens, generally will not be taken into account for purposes of determining whether an employer meets the 50 full-time employee (or equivalents) threshold. Furthermore, for employees working abroad the time spent working for the employer outside of the U.S. would not be taken into account for purposes of determining whether the employer owes an Employer Shared Responsibility

payment or the amount of any such payment.

Liability for the Employer Shared Responsibility Payment

10. Under what circumstances will an employer owe an Employer Shared Responsibility payment?

In 2014, if an employer meets the 50 full-time employee threshold, the employer generally will be liable for an Employer Shared Responsibility payment only if:

(a) The employer does not offer health coverage or offers coverage to less than 95% of its full-time employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on an Exchange;

OR

(b) The employer offers health coverage to at least 95% of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on an Exchange, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee (see question 11, below) or did not provide minimum value (see question 12, below).

After 2014, the rule in paragraph (a) applies to employers that do not offer health coverage or that offer coverage to less than 95% of their full time employees and the dependents of those employees.

11. How does an employer know whether the coverage it offers is affordable?

If an employee's share of the premium for employer-provided coverage would cost the employee more than 9.5% of that employee's annual household income, the coverage is not considered affordable for that employee. If an employer offers multiple healthcare coverage options, the affordability test applies to the lowest-cost option available to the employee that also meets the minimum value requirement (see question 12, below.)

Because employers generally will not know their employees' household incomes, employers can take advantage of one of the affordability safe harbors set forth in the proposed regulations. Under the safe harbors, an employer can avoid a payment if the cost of the coverage to the employee would not exceed 9.5% of the wages the employer pays the employee that year, as reported in Box 1 of Form W-2, or if the coverage satisfies either of two other design-based affordability safe harbors.

12. How does an employer know whether the coverage it offers provides minimum value?

A minimum value calculator will be made available by the IRS and the Department of Health and Human Services (HHS). The minimum value calculator will work in a similar fashion to the [actuarial value calculator](#) that HHS is making available. Employers can input certain information about the plan, such as deductibles and co-pays, into the calculator and get a determination as to whether the plan provides minimum value by covering at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan.

13. If an employer wants to be sure it is offering coverage to all of its full-time employees, how does it know which employees are full-time employees? Does the employer need to offer the coverage to all of its employees because it won't know for certain whether an employee is a full-time employee for a given month until after the month is over and the work has been done?

The proposed regulations provide a method to employers for determining in advance whether or not an employee is to be treated as a full-time employee, based on the hours of service credited to the employee during a previous period. Using this look-back method to measure hours of service, the employer will know the employee's status as a full-time employee at the time the employer would offer coverage. The proposed regulations are consistent with IRS notices that have previously been issued and describe approaches that can be used for various circumstances, such as for employees

who work variable hour schedules, seasonal employees, and teachers who have time off between school years.

Calculation of the Employer Shared Responsibility Payment

14. If an employer that does not offer coverage or offers coverage to less than 95% of its employees owes an Employer Shared Responsibility payment, how is the amount of the payment calculated?

In 2014, if an employer employs enough employees to be subject to the Employer Shared Responsibility provisions and does not offer coverage during the calendar year to at least 95% of its full-time employees, it owes an Employer Shared Responsibility payment equal to the number of full-time employees the employer employed for the year (minus 30) multiplied by \$2,000, as long as at least one full-time employee receives the premium tax credit. (Note that for purposes of this calculation, a full-time employee does not include a full-time equivalent). For an employer that offers coverage for some months but not others during the calendar year, the payment is computed separately for each month for which coverage was not offered. The amount of the payment for the month equals the number of full-time employees the employer employed for the month (minus up to 30) multiplied by 1/12 of \$2,000. If the employer is related to other employers (see question 5 above), then the 30-employee exclusion is allocated among all the related employers. The payment for the calendar year is the sum of the monthly payments computed for each month for which coverage was not offered. After 2014, these rules apply to employers that do not offer coverage or that offer coverage to less than 95% of their full time employees and the dependents of those employees.

15. If an employer offers coverage to at least 95% of its employees, and, nevertheless, owes the Employer Shared Responsibility payment, how is the amount of the payment calculated?

For an employer that offers coverage to at least 95% of its full-time employees in 2014, but has one or more full-time employees who receive a premium tax credit, the payment is computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of \$3,000. The amount of the payment for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30) multiplied by 1/12 of \$2,000. (The cap ensures that the payment for an employer that offers coverage can never exceed the payment that employer would owe if it did not offer coverage). After 2014, these rules apply to employers that offer coverage to at least 95% of full time employees and the dependents of those employees.

Making an Employer Shared Responsibility Payment

16. How will an employer know that it owes an Employer Shared Responsibility payment?

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. The contact for a given calendar year will not occur until after employees' individual tax returns are due for that year claiming premium tax credits and after the due date for employers that meet the 50 full-time employee (plus full-time equivalents) threshold to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

17. How will an employer make an Employer Shared Responsibility payment?

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.

Transition Relief

18. I understand that the Employer Shared Responsibility provisions do not go into effect until 2014. However, the health plan that I offer to my employees runs on a fiscal plan year that starts in 2013 and will run into 2014. Do I need to make sure my plan complies with

these new requirements in 2013 when the next fiscal plan year starts?

For an employer that as of December 27, 2012, already offers health coverage through a plan that operates on a fiscal year (a fiscal year plan), transition relief is available. First, for any employees who are eligible to participate in the plan under its terms as of December 27, 2012 (whether or not they take the coverage), the employer will not be subject to a potential payment until the first day of the fiscal plan year starting in 2014. Second, if (a) the fiscal year plan (including any other fiscal year plans that have the same plan year) was offered to at least one third of the employer's employees (full-time and part-time) at the most recent open season or (b) the fiscal year plan covered at least one quarter of the employer's employees, then the employer also will not be subject to the Employer Shared Responsibility payment with respect to any of its full-time employees until the first day of the fiscal plan year starting in 2014, provided that those full-time employees are offered affordable coverage that provides minimum value no later than that first day. So, for example, if during the most recent open season preceding December 27, 2012, an employer offered coverage under a fiscal year plan with a plan year starting on July 1, 2013 to at least one third of its employees (meeting the threshold for the additional relief), the employer could avoid liability for a payment if, by July 1, 2014, it expanded the plan to offer coverage satisfying the Employer Shared Responsibility provisions to the full-time employees who had not been offered coverage. For purposes of determining whether the plan covers at least one quarter of the employer's employees, an employer may look at any day between October 31, 2012 and December 27, 2012.

19. Is transition relief available to help employers that are close to the 50 full-time employee threshold determine their options for 2014?

Yes. Rather than being required to use the full twelve months of 2013 to measure whether it has 50 full-time employees (or an equivalent number of part-time and full-time employees), an employer may measure using any six-consecutive-month period in 2013. So, for example, an employer could use the period from January 1, 2013, through June 30, 2013, and then have six months to analyze the results, determine whether it needs to offer a plan, and, if so, choose and establish a plan.

Additional Information

20. When can an employee receive a premium tax credit?

[Premium tax credits](#) generally are available to help pay for coverage for employees who

- are between 100% and 400% of the federal poverty level and enroll in coverage through an Affordable Insurance Exchange,
- are not eligible for coverage through a government-sponsored program like Medicaid or CHIP, and
- are not eligible for coverage offered by an employer or are eligible only for employer coverage that is unaffordable or that does not provide minimum value.

21. If an employer does not employ enough employees to be subject to the Employer Shared Responsibility provisions, does that affect the employer's employees' eligibility for a premium tax credit?

No. The rules for how eligibility for employer-sponsored insurance affects eligibility for the premium tax credit are the same, regardless of whether the employer employs enough employees to be subject to the Employer Shared Responsibility provisions.

22. Where can employees get more information about Affordable Insurance Exchanges?


The Department of Health and Human Services is developing the [rules for exchanges](#).

23. The Treasury Department and the IRS have proposed regulations on the Employer Shared Responsibility provisions that are proposed to be effective for months after December 31, 2013. However, there are certain decisions and actions employers may have to take during 2013 to prepare for 2014. May employers rely on the proposed regulations during 2013 for guidance on the Employer Shared Responsibility provisions?

Yes. Taxpayers may rely on the proposed regulations for purposes of compliance with the Employer

Shared Responsibility provisions. If the final regulations are more restrictive than the guidance in the proposed regulations, the final regulations will be applied prospectively, and employers will be given sufficient time to come into compliance with the final regulations.

Page Last Reviewed or Updated: 28-Dec-2012



This is only a summary. If you want more detail about your coverage and costs, you can get the complete terms in the policy or plan document at [www.\[insert\]](#) or by calling 1-800-[insert].

| Important Questions | Answers | Why this Matters: |
|---|---------|-------------------|
| What is the overall deductible? | \$ | |
| Are there other deductibles for specific services? | \$ | |
| Is there an out-of-pocket limit on my expenses? | \$ | |
| What is not included in the out-of-pocket limit? | | |
| Is there an overall annual limit on what the plan pays? | | |
| Does this plan use a network of providers? | | |
| Do I need a referral to see a specialist? | | |
| Are there services this plan doesn't cover? | | |



- **Co-payments** are fixed dollar amounts (for example, \$15) you pay for covered health care, usually when you receive the service.
- **Co-insurance** is *your* share of the costs of a covered service, calculated as a percent of the **allowed amount** for the service. For example, if the plan's **allowed amount** for an overnight hospital stay is \$1,000, your **co-insurance** payment of 20% would be \$200. This may change if you haven't met your **deductible**.
- The amount the plan pays for covered services is based on the **allowed amount**. If an out-of-network **provider** charges more than the **allowed amount**, you may have to pay the difference. For example, if an out-of-network hospital charges \$1,500 for an overnight stay and the **allowed amount** is \$1,000, you may have to pay the \$500 difference. (This is called **balance billing**.)
- This plan may encourage you to use _____ **providers** by charging you lower **deductibles**, **co-payments** and **co-insurance** amounts.

| Common Medical Event | Services You May Need | Your cost if you use an | | Limitations & Exceptions |
|--|--|-------------------------|-------------------------|--------------------------|
| | | In-network Provider | Out-of-network Provider | |
| If you visit a health care provider's office or clinic | Primary care visit to treat an injury or illness | | | |
| | Specialist visit | | | |
| | Other practitioner office visit | | | |
| | Preventive care/screening/immunization | | | |
| If you have a test | Diagnostic test (x-ray, blood work) | | | |
| | Imaging (CT/PET scans, MRIs) | | | |
| If you need drugs to treat your illness or condition | Generic drugs | | | |
| | Preferred brand drugs | | | |
| | Non-preferred brand drugs | | | |
| | Specialty drugs | | | |
| More information about prescription drug coverage is available at www.[insert]. | | | | |
| If you have outpatient surgery | Facility fee (e.g., ambulatory surgery center) | | | |
| | Physician/surgeon fees | | | |
| If you need | Emergency room services | | | |

Questions: Call 1-800-[insert] or visit us at [www.\[insert\].com](#).

If you aren't clear about any of the bolded terms used in this form, see the Glossary. You can view the Glossary at [www.\[insert\]](#) or call 1-800-[insert] to request a copy.

Summary of Benefits and Coverage: What this Plan Covers & What it Costs

| Common Medical Event | Services You May Need | Your cost if you use an | | Limitations & Exceptions |
|--|--|-------------------------|-------------------------|--------------------------|
| | | In-network Provider | Out-of-network Provider | |
| immediate medical attention | Emergency medical transportation | | | |
| | Urgent care | | | |
| If you have a hospital stay | Facility fee (e.g., hospital room) | | | |
| | Physician/surgeon fee | | | |
| If you have mental health, behavioral health, or substance abuse needs | Mental/Behavioral health outpatient services | | | |
| | Mental/Behavioral health inpatient services | | | |
| | Substance use disorder outpatient services | | | |
| | Substance use disorder inpatient services | | | |
| If you are pregnant | Prenatal and postnatal care | | | |
| | Delivery and all inpatient services | | | |
| If you need help recovering or have other special health needs | Home health care | | | |
| | Rehabilitation services | | | |
| | Habilitation services | | | |
| | Skilled nursing care | | | |
| | Durable medical equipment | | | |
| If your child needs dental or eye care | Hospice service | | | |
| | Eye exam | | | |
| | Glasses | | | |
| | Dental check-up | | | |

Excluded Services & Other Covered Services:

| |
|---|
| Services Your Plan Does NOT Cover (This isn't a complete list. Check your policy or plan document for other excluded services.) |
| • • |

Questions: Call 1-800-[insert] or visit us at [www.\[insert\].com](http://www.[insert].com).

If you aren't clear about any of the bolded terms used in this form, see the Glossary. You can view the Glossary at [www.\[insert\]](http://www.[insert]) or call 1-800-[insert] to request a copy.

Other Covered Services (This isn't a complete list. Check your policy or plan document for other covered services and your costs for these services.)

•

Your Rights to Continue Coverage:

[insert applicable information from instructions]

Your Grievance and Appeals Rights:

If you have a complaint or are dissatisfied with a denial of coverage for claims under your plan, you may be able to **appeal** or file a **grievance**. For questions about your rights, this notice, or assistance, you can contact: [insert applicable contact information from instructions].

_____To see examples of how this plan might cover costs for a sample medical situation, see the next page.

About these Coverage Examples:

These examples show how this plan might cover medical care in given situations. Use these examples to see, in general, how much financial protection a sample patient might get if they are covered under different plans.



This is not a cost estimator.

Don't use these examples to estimate your actual costs under this plan. The actual care you receive will be different from these examples, and the cost of that care will also be different.

See the next page for important information about these examples.

Having a baby (normal delivery)

- Amount owed to providers: \$7,540
- Plan pays \$
- Patient pays \$

Sample care costs:

| | |
|----------------------------|----------------|
| Hospital charges (mother) | \$2,700 |
| Routine obstetric care | \$2,100 |
| Hospital charges (baby) | \$900 |
| Anesthesia | \$900 |
| Laboratory tests | \$500 |
| Prescriptions | \$200 |
| Radiology | \$200 |
| Vaccines, other preventive | \$40 |
| Total | \$7,540 |

Patient pays:

| | |
|----------------------|-----------|
| Deductibles | \$ |
| Co-pays | \$ |
| Co-insurance | \$ |
| Limits or exclusions | \$ |
| Total | \$ |

Managing type 2 diabetes (routine maintenance of a well-controlled condition)

- Amount owed to providers: \$4,100
- Plan pays \$
- Patient pays \$

Sample care costs:

| | |
|--------------------------------|----------------|
| Prescriptions | \$1,500 |
| Medical Equipment and Supplies | \$1,300 |
| Office Visits and Procedures | \$730 |
| Education | \$290 |
| Laboratory tests | \$140 |
| Vaccines, other preventive | \$140 |
| Total | \$4,100 |

Patient pays:

| | |
|----------------------|-----------|
| Deductibles | \$ |
| Co-pays | \$ |
| Co-insurance | \$ |
| Limits or exclusions | \$ |
| Total | \$ |

Questions: Call 1-800-[insert] or visit us at [www.\[insert\].com](http://www.[insert].com).

If you aren't clear about any of the bolded terms used in this form, see the Glossary. You can view the Glossary at [www.\[insert\]](http://www.[insert]) or call 1-800-[insert] to request a copy.

Questions and answers about the Coverage Examples:

What are some of the assumptions behind the Coverage Examples?

- Costs don't include **premiums**.
- Sample care costs are based on national averages supplied by the U.S. Department of Health and Human Services, and aren't specific to a particular geographic area or health plan.
- The patient's condition was not an excluded or preexisting condition.
- All services and treatments started and ended in the same coverage period.
- There are no other medical expenses for any member covered under this plan.
- Out-of-pocket expenses are based only on treating the condition in the example.
- The patient received all care from in-network **providers**. If the patient had received care from out-of-network **providers**, costs would have been higher.

What does a Coverage Example show?

For each treatment situation, the Coverage Example helps you see how **deductibles**, **co-payments**, and **co-insurance** can add up. It also helps you see what expenses might be left up to you to pay because the service or treatment isn't covered or payment is limited.

Does the Coverage Example predict my own care needs?

- ✗ **No.** Treatments shown are just examples. The care you would receive for this condition could be different based on your doctor's advice, your age, how serious your condition is, and many other factors.

Does the Coverage Example predict my future expenses?

- ✗ **No.** Coverage Examples are **not** cost estimators. You can't use the examples to estimate costs for an actual condition. They are for comparative purposes only. Your own costs will be different depending on the care you receive, the prices your **providers** charge, and the reimbursement your health plan allows.

Can I use Coverage Examples to compare plans?

- ✓ **Yes.** When you look at the Summary of Benefits and Coverage for other plans, you'll find the same Coverage Examples. When you compare plans, check the "Patient Pays" box in each example. The smaller that number, the more coverage the plan provides.

Are there other costs I should consider when comparing plans?

- ✓ **Yes.** An important cost is the **premium** you pay. Generally, the lower your **premium**, the more you'll pay in out-of-pocket costs, such as **co-payments**, **deductibles**, and **co-insurance**. You should also consider contributions to accounts such as health savings accounts (HSAs), flexible spending arrangements (FSAs) or health reimbursement accounts (HRAs) that help you pay out-of-pocket expenses.

Questions: Call 1-800-[insert] or visit us at [www.\[insert\].com](http://www.[insert].com).

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You can view the Glossary