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# EMPLOYER MANDATE DELAY PROVIDES SOME RELIEF, BUT CHALLENGES REMAIN

On February 10, the US Treasury Department and Internal Revenue Service released final regulations on the employer shared responsibility provisions otherwise known as the "employer mandate" of the ACA law. Significant changes include:

- Employers with 50–99 employees now have until 2016 to comply with the employer mandate.
- For 2015, "substantially all employees" will mean 70% of the full-time employee population. Previously, that figure was 95% — and will return to that again in 2016.
- Employers with more than 99 employees that don't offer coverage in 2015 will make a $2,000 (indexed) payment for every employee, less an exemption for the first 80 employees. That's an increase — the exemption previously covered the first 30 employees.

Here is more detail on each of the changes and what employers need to keep in mind to comply with the final regulations.

## 2016 COMPLIANCE FOR SMALL EMPLOYERS

Clearly, employers with 50–99 employees will find the additional year useful to prepare for compliance and may well decide to take advantage of the extra time. The employer mandate includes offering coverage to all employees who work 30 or more hours per week, with a minimum plan value of 60% and affordable employee contributions. The smaller the employer, the less likely it is to offer medical coverage. Offer rates range from 54% of employers with 10–49 employees to 98% of employers with 500 or more employees (see Figure 1).

FIGURE 1

HEALTH INSURANCE OFFER RATES IN 2013, BY EMPLOYER SIZE

| NUMBER OF EMPLOYEES | PERCENTAGE OFFERING HEALTH INSURANCE* |
|---|---|
| 10–49 employees | 54% |
| 50–199 employees | 82% |
| 200–499 employees | 94% |
| 500+ employees | 98% |

**To at least some employees*

Source: Mercer's *National Survey of Employer-Sponsored Health Plans*

## THE NEW DEFINITION FOR 'SUBSTANTIALLY ALL' EMPLOYEES

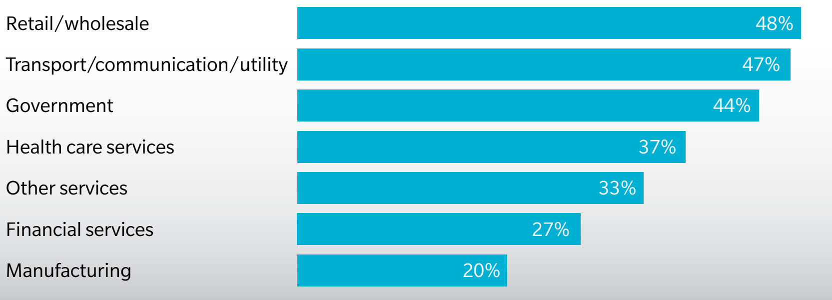
In 2015, employers with more than 99 full-time employee equivalents must offer minimum essential coverage to "substantially all" — now defined as 70% — of their full-time employees who work on average 30 or more hours per week, or else they must make a shared responsibility payment.

The relaxation of the definition of "substantially all" employees will provide transitional relief for some employers. Around two-thirds of large employers (those with 500 or more employees) already offer medical coverage to all employees working 30 or more hours per week.

However, for those that do not — including nearly half of employers in the wholesale/retail industry, which relies most heavily on part-time workers — the transition year to get to the 95% "substantially all" threshold will probably be a welcome reprieve. That said, some may decide to move forward with plans to offer coverage to all employees in 2015 (see Figure 2).

FIGURE 2

PERCENTAGE OF LARGE EMPLOYERS THAT CURRENTLY DO NOT OFFER COVERAGE IN A QUALIFIED PLAN TO ALL EMPLOYEES WORKING AN AVERAGE OF 30 OR MORE HOURS PER WEEK




Source: Mercer's *National Survey of Employer-Sponsored Health Plans*

Finally, it is important to understand that this change in definition only protects the employer from the $2,000 (indexed) "non-offering employer" payment. The employer could still be subject to the $3,000 (indexed) payment for each full-time employee who receives a premium tax credit for subsidized coverage in the public marketplace. This could occur if the employer plan does not have affordable contributions or does not meet the minimum plan value requirement — or is not offered to 100% of full-time employees.

## GUIDANCE ON SHARED RESPONSIBILITY PAYMENTS

Employers with more than 99 employees in 2014 could be subject to payments beginning in 2015. Five important things to note about the shared responsibility payments are:

- The shared responsibility payments are indexed and increase every year. In 2015, the payment multipliers are estimated to be $2,120 for non-offering employers and $3,180 for offering employers.
- In 2015, the payment for employers not offering minimum essential coverage to substantially all full-time employees will be based on offering coverage to 70% of full-time employees (versus 95% in 2016).

- If the employer is subject to the $2,120 per employee non-offering payment, the first 80 employees will be deducted from the calculation (versus 30 in 2016).
- All employers with 100 or more employees could be subject to the offering employer payment for 2015 — $3,180 for **any** full-time employee who goes to the public exchange and receives subsidized coverage.
- Shared responsibility payments for 2015 will not be payable until sometime in 2016.

## ADDITIONAL CLARIFICATIONS IN THE FINAL REGULATIONS

The final regulations provide additional clarification on a variety of features of the shared responsibility requirements, including the following:

- How to determine full-time status of employees.
- Hours of service rules, including variable-hour and seasonal employees.
- Which dependent children must be offered coverage.
- Numerous transition rules, including those for employers with noncalendar year plans.
- Safe harbors.

## THE LOOMING EXCISE TAX

Although the recent regulations will provide some breathing room for employers that need to make changes to comply with the shared responsibility requirements, they have no impact on the excise tax that will come into effect in 2018. The excise tax, also known as the Cadillac tax, is a 40% tax on the cost of medical coverage above thresholds set by law.

According to a Mercer survey conducted in 2013, almost a third of employers were already making changes to health care benefits for the upcoming plan year in anticipation of the excise tax in 2018. It is not too soon to be thinking about how your medical plan offerings will be affected by the excise tax. Now is the time to start planning a strategy to phase in over the next few years to help you mitigate the additional cost associated with this tax.

## FOR MORE INFORMATION

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