

On Tuesday, March 23, President Obama signed into law the “Patient Protection and Affordable Care Act” (“PPACA”). A reconciliation bill making changes to the Act was signed by the President on March 30. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. This summary provides an overview of the employer mandate provisions of the Act.

Summary: Beginning in 2014, employers with at least 50 full-time employees are required to offer minimum essential coverage that satisfies the individual mandate and to report to the Secretary of the Treasury (“Treasury”) their compliance with the requirement. Employers that do not comply and whose employees receive a premium credit or cost-sharing subsidy will be subject to a penalty. (PPACA §§ 1513, 1514 and 10106 adding §§ 4980H and 6056 to the Internal Revenue Code (IRC); § 1003 of Reconciliation Bill).

**Definitions/
Clarifications:** “Full-time employee” means an employee working an average of at least 30 hours per week, in accordance with regulations to be issued by the Treasury.

“Employer” means an entity that has at least 50 full-time employees. When counting full-time employees, an employer is not considered to exceed 50 full-time employees if the excess is due to seasonal employees working for 120 days or less during the calendar year. Note, if the employer did not exist in the preceding year, employer size is based on the average number of employees that are reasonably expected to be employed in the current calendar year.

Part-time employees (those working less than 30 hours per week) are counted to determine employer size. To determine the number of full-time equivalent employees, the employer would add up all of the hours worked by a part-time employee and divide by 120. That number is then added to the number of full time employees. Penalties are assessed only on full-time employees that work 30 or more hours per week. (PPACA §§1513 and 10106 adding §4980H to the IRC; §1003 of Reconciliation Bill)

Penalty: Beginning in 2014, employers may be subject to a penalty if an employee receives a premium credit or cost-sharing subsidy. The penalty is calculated as follows:

Employers Not Offering Coverage: If an employer does not offer minimum essential coverage *and* one or more full-time employees receive a premium credit or cost-sharing subsidy through the Exchange, the penalty is:

- \$2,000 per year per full-time worker. When calculating the penalty the first 30 full-time workers are subtracted from the payment calculation. The penalty is prorated for partial coverage during the year. (e.g. an employer with 51 full-time workers pays \$2,000 x 21 = \$42,000).

Employers Offering Coverage: If an employer offers minimum essential coverage *and* one or more full-time employees receive a premium credit or cost-sharing subsidy through the Exchange, the penalty is \$3,000 per employee who receives a premium credit or cost-sharing subsidy. The maximum amount of the penalty cannot exceed \$2,000 per full-time employee, excluding the first 30 full-time employees. For example:

- An employer with 100 employees, 10 of which receive a premium credit would be required to pay a \$30,000 penalty (10 x \$3,000) and the maximum penalty would be \$140,000 (70 x \$2,000).

The penalties will be due on an annual, monthly or other periodic basis as established by the Treasury. The penalty amounts are indexed annually. (PPACA §§ 1513 and 10106 adding § 4980H to the IRC; § 1003 of the Reconciliation Bill)

Employer Reporting Requirements:

Beginning in January 2014, employers must report certain information to the Treasury. The Treasury may require this information to be included with the reporting required under the individual mandate. An employer offering coverage through a health insurer may enter into an agreement with the insurer to include the information required above with the insurer's required report under the individual mandate. (See BCBSRI's *Federal Healthcare Reform: Individual Mandate & Subsidy* fact sheet for additional information.)

The following information must be reported:

- Name, date and employer identification number of the employer;
- Certification as to whether the employer offers its employees the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan;
- If the employer certifies that the employer did offer to its full-time employees the opportunity to enroll:
 - The length of any waiting period;
 - The months during the calendar year for which coverage was available;
 - The monthly premium for the lowest cost option in each of the enrollment categories under the plan; and
 - The employer's share of the total allowed costs of benefits provided under the plan.
- The number of full-time employees for each month during the calendar year;
- The name, address and tax identification number of each full-time employee during the calendar year and the months (if any) during which the employee (and any dependents) were covered under any health benefit plan; and
- Other information the Treasury may require.

Also beginning January 2014, every employer required to report to the Treasury as mentioned above, must give each full-time employee whose name is included in the report a written statement showing:

- The name, address and phone number of the person who made the report; and
- The information that was included in the report.

(PPACA §§ 1514 and 10106 adding § 6056 to the IRC)

Automatic Enrollment:

Employers with more than 200 full-time employees that offer a group health plan must automatically enroll new full-time employees in one of the health plans offered and continue the enrollment of current employees. The employer must give employees adequate notice and the opportunity to opt out of any coverage. (PPACA § 1511 adding § 18A to the FLSA)

Employee Notice Requirement:

Beginning March 1, 2013, employers must provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013) written notice that includes the following:

- Information about the existence of an Exchange, a description of the services provided by the Exchange and information about how to contact the Exchange to request assistance;
- Whether the employee may be eligible for a premium credit through the Exchange (See BCBSRI's *Federal Healthcare Reform: Individual Mandate & Subsidy* fact sheet for additional information); and
- If the employee purchases a qualified health plan through the Exchange, the employee will lose the employer contribution and that all or a portion of such contribution may be excludable from income for tax purposes. (See BCBSRI's *Federal Healthcare Reform: Exchanges* fact sheet for additional information)

(See § 1512 of the PPACA adding § 18B to the FLSA)

Employer Tax Credit: Employers with up to 25 full-time equivalent employees are eligible for a tax credit to partially offset the cost of providing health insurance coverage. See BCBSRI's *Federal Healthcare Reform: Employer Taxation Provisions* fact sheet for additional information.

Effective Date: The effective dates for the employer mandate provisions vary and are identified throughout this document.

References: PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh3590enr.txt.pdf
Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh4872pcs.txt.pdf

This summary is provided for informational purposes only and is not intended as legal advice. Please consult your legal advisor for additional information.