

Health Care Reform Implementation Frequently Asked Questions

What does this mean for me and my business?

Q: As an employer, do I need to do anything in 2010 now that this is law?

A: The employer requirements for offering coverage and liability for penalties do not begin until 2014. All of the details are not yet known, and action by several federal agencies is required to further define some of these requirements. However, the law imposes some requirements that affect all employers that begin in the next several years.

Q: Are there requirements of all employers, regardless of whether you have to offer coverage or not?

A: Yes, here are a few examples:

- All employers will serve as a source of information for their employees. As of March 1, 2013, employers must inform employees about the existence of the exchange in their state and how employees can access it. Guidance will be issued about how and what must be provided.
- Also, employers must begin reporting the value of employee's health benefits on their W-2 forms issued for tax years after 12/31/2010.
- In 2012, the law expands the IRS 1099 business reporting requirement to include corporate providers of goods and services of \$600 or more.

Q: Is the value of health benefits employers report on W-2's for tax years after 12/31/2010 taxable?

A: No. The value of the health benefits is reportable on the W-2, but it is not taxable.

Q: What is included in the expanded 1099 reporting?

A: Businesses that pay any amount greater than \$600 to providers (contractor, vendor, etc.) of property and services after 12/31/2011 (including corporate providers) are required to file a 1099 information report with each provider and the IRS. The IRS has already stated that many business purchases made with credit or debit cards would be exempt from this new requirement because these transactions are already reported to the IRS by banks and payment processors. Even though this provision is not implemented until 2012, the IRS has issued a notice and request for comment on how this provision should be administered. For more information consult IRS [Notice 2010-51](#). The Association welcomes your [feedback](#) on the impact of this provision.

Q: I heard there are small business tax credits available. When do they begin and am I eligible?

A: Beginning Jan. 1, 2010, certain small businesses with up to 25 full-time-equivalent employees may qualify for a tax credit for contributing to their employees' health coverage now. The IRS has issued [guidance and tools](#) to help small employers determine if they are eligible for the tax credit. *Please note: the formula for calculating the small business tax credit FTEs is different than that used to calculate the 50 FTE threshold (see below).*

Q: I heard that some health plans are considered "grandfathered," what does that mean?

A: Grandfathered plans are those what were in existence as of March 23, 2010 when the bill was signed into law. The Department of Health and Human Services, Labor and Treasury (IRS) have issued a [temporary regulation](#), effective July 12, 2010, regarding what changes can be made to plans and maintain grandfathered status. The rule also lays out specific changes that will trigger a loss of status. Grandfathered plans are subject to some but not all insurance reforms imposed by the law on newer plans. Comments are currently being accepted by HHS, DOL and Treasury through August 16, 2010. It is expected the rule will be made final after the comment period closes. Please see the Association's [summary of the interim final rule on grandfathered plan status](#) for more details. We also welcome your [feedback](#) and comments on the rule.

Q: If I have 3 separate restaurant companies, are they each considered separate employers under the health care law?

A: Not necessarily. For the purposes of health care reform, a single employer is defined by the "Common Control" clause in the tax code [IRC Sections 414 (b), (c), (m), (o)]. Consult your tax advisor to see how this provision of the tax code applies to you. If considered a single employer, all the employees must be combined together for purposes of calculating whether an employer is above or below the 50 full-time equivalent threshold.

Q: Will I be required to offer health care to all my employees?

A: Employers with 50 or more full-time-equivalent employees (see calculation below) will be required to offer their full-time employees affordable "minimum essential coverage" health benefits package starting in 2014 or may be liable to

pay a penalty for not doing so. Minimum essential coverage has not yet been fully defined; see more below. Part-time employees' hours are considered solely for the purpose of determining if a business is above or below the 50 FTE threshold. At no time does the law require employers to offer affordable minimum essential coverage or pay penalties for part-time employees.

Q: Will small businesses be required to provide coverage too?

A: No. Employers who have fewer than 50 full-time-equivalents are not subject to the employer mandate. However, all businesses are required to do certain things as discussed above – for example, provide employees information about the exchanges and how to access them, report the value of health benefits on the employees' W-2, and additional 1099 reporting.

Q: How do I know if I am considered a small business and therefore not subject to the employer mandate?

A: The threshold is determined by the following formula, which you would calculate on a monthly basis:

$$\begin{aligned} & ___ \text{ Number of full-time employees (defined as those who average 30+ hours a week for that month)} \\ & + ___ \text{ All hours worked by part-time employees that month} \div 120 \text{ hours} \\ & = ___ \text{ Number of full-time equivalents.} \end{aligned}$$

Q: Do I have to offer coverage for my part-time employees?

A: No. Part-time employees (those working less than 30 hours per week on average) are counted only in determining whether an employer meets the 50 full-time equivalent threshold for coverage under the law. The employer responsibility section of the law does not require employers to offer health care coverage to their part-time employees or pay healthcare penalties on their part-time employees.

Q: How much will the new requirements cost me?

A: Cost will vary depending on your operation and how minimum coverage is defined through the regulatory process. The National Restaurant Association is conducting an economic impact study to further determine overall costs to the restaurant industry.

Q: If I choose to offer health care coverage to my full-time employees, how much will I have to provide?

A: Covered employers will have to provide affordable "minimum essential coverage" with at least a 60 percent actuarial value to meet the requirements of the law. "Minimum essential coverage" will be defined through the regulatory process. The National Restaurant Association will be weighing in throughout the regulatory process on this and other issues.

Q: What is a premium tax credit?

A: The law created a subsidy to be used by those with incomes up to 400% of the federal poverty level to obtain affordable coverage (federal poverty level for 2010: \$10,830 individual/\$22,050 family of 4). The tax credit is used on the exchange to purchase coverage to satisfy the minimum essential coverage requirement of the individual mandate. The exchanges will play a central role in certifying individuals are eligible to obtain the premium tax credit.

Q: Are there penalties for employers subject to the law who do not offer coverage?

A: Yes. An employer who is covered by the law may choose not to offer coverage to their full-time employees, but if at least 1 employee uses a premium tax credit to access coverage on the exchange, the employer will be subject to a penalty of \$2,000 per full-time employee annually (or \$167 monthly). Employers may exclude the first 30 full-time employees in calculating their penalty. For example, a covered employer who has 60 full-time employees chooses not to offer coverage, and at least 1 employee uses a premium tax credit on the exchange, the employer would face an annual penalty of \$60,000, assuming a constant workforce. [60 total full-time employees – 30 full-time employees excluded from the calculation = 30; 30 x \$2,000 penalty = \$60,000.] However, it should be noted that the penalty is calculated and assessed on a monthly basis.

Q: Are there penalties for employers who offer the required coverage but it is unaffordable to their employees?

A: Yes. If an employer offers coverage to their full-time employees, but the employee's contribution is more than 9.5% of their household income, and at least 1 full-time employee accesses coverage using a premium tax credit on the exchange, the employer is subject to a \$3,000 annual penalty per full-time employee doing so (or \$250 monthly). The maximum amount of penalty is limited so that it can not be any greater than what the employer would be liable for if they did not offer coverage at all.

Q: What is a free choice voucher?

A: If an employer does offer minimum essential coverage, but a full-time employee's contribution is between 8% and 9.5% of their household income, then the employee can request a free choice voucher from their employer to purchase coverage on the exchange. The voucher is the amount equal to the employer contribution for an individual plan (unless the employee elects a family plan). The amount of the voucher is still tax deductible for employers as are the employer's contributions for other employees on in their plan. An employee can not use a premium tax credit and be eligible for a free choice voucher at the same time. Regulations are anticipated regarding how this provision will be administered.

Q: How will I know my employee's household income to determine if my plan is affordable or not?

A: It is anticipated that the exchange in each state, in consultation with the IRS, will verify an employee's household income (wages and other taxable income, based on tax filings). The exchanges will also certify if an individual qualifies for a premium tax credit or free choice voucher. The law requires the states to set up at least one exchange in their state by 2014.

Q: If I provide coverage, do I have to offer it to my new full-time employees on day one?

A: Those subject to the employer mandate in the law are allowed a waiting period of 90 days without penalty beginning in 2014. On day 91 the employer must offer new hires minimum essential coverage or pay the penalty for not doing so.

Q: Are employees within Employee Stock Option Plans considered employees or owners?

A: With respect to determining the threshold or the applicable penalties for not offering adequate coverage, all employees must be considered, regardless of whether they hold stock options.

Q: What is the individual mandate?

A: The individual mandate requires everyone to obtain minimum essential coverage for themselves (and their dependents) or pay a penalty. The penalty is phased-in to \$695 per calendar year or up to 2.5% of income (as of 2016 and beyond). There are income exemptions. Only individuals under 30 can purchase a catastrophic plan to satisfy this mandate; the law does not allow an employer to offer a catastrophic plan and claim it to satisfy the requirement for minimum essential coverage.