



EMPLOYER MANDATE

What is the employer mandate?

The employer mandate requires that employers with 50 or more full-time employees must offer medical coverage that is "affordable" (costs no more than 9.86 percent of an employee's wages in 2019 and 9.78 percent in 2020) and provides "minimum value" (covers 60 percent plus of total costs) to 95 percent of their full-time employees and their children up to age 26 or face penalties.*

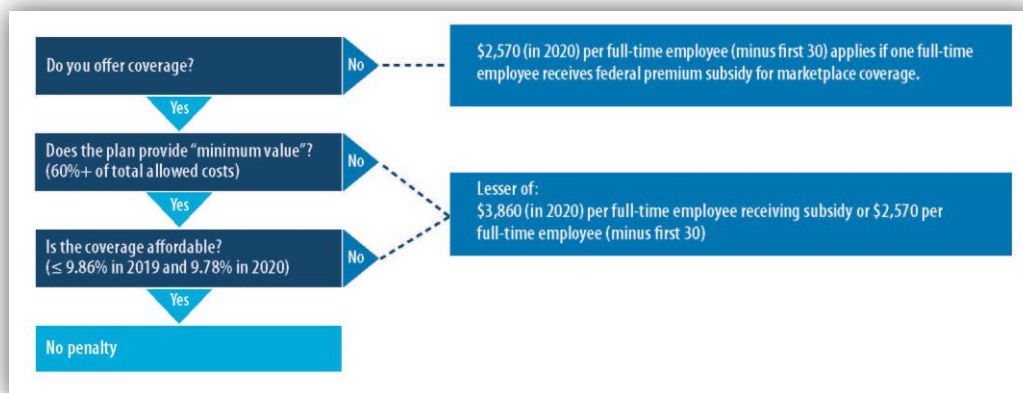
* Before January 2016, employers with 50 to 99 were not required to offer coverage, and employers with 100 or more complied if they offered coverage to at least 70 percent of their full-time or full-time equivalent (FTE) employees.

Overview

Employers must offer health insurance that is affordable and provides minimum value to 95% of their full-time employees and their children up to age 26, or be subject to penalties. This is known as the employer mandate. It applies to employers with 50* or more full-time employees, and/or full-time equivalents (FTEs). Employees who work 30 or more hours per week are considered full-time.

The employer mandate and employer penalties

Employers subject to the employer mandate are required to offer coverage that provides "minimum value" and is "affordable," or be subject to penalties. The chart below explains these requirements and the penalties that apply if they are not met



* Before January 2016, employers with 50–99 employees were not required to offer coverage, and employers with 100 or more complied if they offered coverage to at least 70% of their full-time or FTE employees.



Penalty assessment process

From the time employers offer coverage through the final reporting forms submitted to the IRS, it is important that they maintain all documentation and records as proof of compliance with each aspect of the employer mandate. These documentation and records will be critical in the event the employer becomes subject to the Employer Shared Responsibility Payment (ESRP) assessment process.

Here is a snapshot of the penalty and assessment process:

Employer offers health coverage compliant with the employer mandate

- ▶ The Marketplace should notify the employer if an employee receives subsidized coverage during this same plan year
- ▶ Employer may gather facts for response or file an appeal within 90 days of Marketplace notification



Employer reports coverage offer and respective data during the applicable tax season



Marketplace reports Minimum Essential Coverage data on employees, including subsidy information



IRS sends Letter 226J, with an Employer Shared Responsibility Payment assessment based on the data they have processed

Employer sends Form 14764 (response to Letter 226J) with Form 14765 (lists employees receiving subsidized coverage) and any updated or corrected data to previously reported Forms 1095-C



IRS sends Notice 220J, confirming the final penalty amounts owed, which could state no amount is owed after final audit review.



Examples of employer penalties

The employer does not offer coverage to full-time employees

The 2020 penalty is \$2,570 per full-time employee, excluding the first 30 employees. This example shows how the penalty would be calculated.

EMPLOYER	TRIGGER	PENALTY
500 full-time employees No coverage offered	One employee purchases coverage on the marketplace and is eligible for a federal premium subsidy	\$2,570 per full-time employee, minus the first 30 employees $500 - 30 = 470$ employees $470 \times \\$2,570 = \\$1,207,900$ penalty

The employer offers coverage that does not meet the minimum value and affordability requirements

The penalty is the lesser of the two results, as shown in this example.

EMPLOYER	TRIGGER	PENALTY
1,200 full-time employees Employer offers coverage, but coverage is not affordable and/or doesn't provide minimum value	The penalty is triggered if one employee purchases coverage on the marketplace and receives a federal premium subsidy 250 employees purchase coverage on the marketplace and are eligible for a subsidy	Lesser of \$2,570 per full-time employee, minus the first 30 employees, OR \$3,860 per full-time employee receiving a federal premium subsidy $1,170 \times \$2,570 = \$3,006,900$ penalty $250 \times \\$3,860 = \\$965,000$ penalty (lesser penalty applies)

Determining how many full-time employees you have

The regulations allow various calculation methods for determining full-time equivalent status. Because these calculations can be complex, employers should consult with their legal counsel.

- Full-time employees work an average of 30 hours per week or 130 hours per calendar month, including vacation and paid leaves of absence.
- Part-time employees' hours are used to determine the number of full-time equivalent employees for purposes of determining whether the employer mandate applies.
- FTE employees are determined by taking the number of hours worked in a month by part-time employees, or those working fewer than 30 hours per week, and dividing by 120.

Here are some considerations to help determine how part-time and seasonal employees equate to full-time and FTE employees.

- Only employees working in the United States are counted.
- Volunteer workers for government and tax-exempt entities, such as firefighters and emergency responders, are not considered full-time employees.
- Teachers and other education employees are considered full-time employees even if they don't work full-time year-round.



- Seasonal employees who typically work six months or less are not considered full-time employees. This includes retail workers employed exclusively during holiday seasons.
- Schools with adjunct faculty may credit 2 ¼ hours of service per week for each hour of teaching or classroom time.
- Hours worked by students in federal or state-sponsored work-study programs will not be counted in determining if they are full-time employees.

Waiting period limitation

Employers may not impose enrollment waiting periods that exceed 90 days for all plans, both grandfathered and non-grandfathered, beginning on or after January 1, 2014. Shorter waiting periods are allowed. Coverage must begin no later than the 91st day after the enrollment date. All calendar days, including weekends and holidays, are counted in determining the 90-day period.

Frequently asked questions

Q How do I determine if my plan provides “minimum value”?

A A plan provides “minimum value” if it pays at least 60% of the cost of covered services (considering deductibles, copays and coinsurance). The U.S. Department of Health & Human Services has developed a minimum value calculator that can be used to determine if a plan provides minimum value. The minimum value calculator is available at <https://goo.gl/4lVFbe>.

Q How is “affordable” coverage determined?

A Coverage is considered “affordable” if employee contributions for employee-only coverage do not exceed a certain percentage of an employee’s household income (9.86% in 2019 and 9.78% in 2020). Based on IRS safe harbors, coverage is affordable if the cost of self-only coverage is less than the indexed threshold of the following:

- Employee’s W-2 wages (reduced for any salary reductions under a 401(k) plan or cafeteria plan)
- Employee’s monthly wages (hourly rate x 130 hours per month)
- Federal Poverty Level for a single individual

In applying wellness incentives to the employee contributions used to determine affordability, assume that each employee earns all wellness incentives related to tobacco use, but no other wellness incentives.

Q What are the employer mandate requirements for plan years beginning in 2016?

A Employers with 50 or more full-time and/or FTE employees must offer affordable/minimum value medical coverage to their full-time employees and their dependents to age 26, or may be subject to penalties. The amount of the penalty depends on whether or not the employer offers coverage to at least 95% of its full-time employees and their dependents. Employers who fail to offer coverage to at least 95% of full-time employees and dependents may be subject to a penalty. Employers who offer coverage may still be subject to a penalty if the



coverage is not affordable or does not provide minimum value. Employers must treat all employees who average 30 hours a week as full-time employees.

Examples

Assume each employer has 1,000 full-time employees who work at least 30 hours per week.

- Employer 1 currently offers medical coverage to all 1,000 and their dependents. The company is considered to offer coverage since it offers coverage to more than 95% of its full-time employees and their dependents.
- Employer 2 currently offers medical coverage to 800 full-time employees and their dependents. The company will need to offer coverage to 150 more full-time employees and their dependents to meet the 95% requirement to be treated as offering coverage.
- Employer 3 has 500 full-time, salaried employees who are offered coverage and 500 full-time hourly employees who are not offered coverage. The company will need to offer coverage to at least 450 hourly employees (and their dependents) to meet the 95% requirement to be treated as offering coverage.
- Employer 4 offers coverage to 950 full-time employees and their dependents. Only 600 of those employees actually enroll in coverage. The company is compliant no matter how many employees actually enroll in affordable coverage that offers minimum value.

Q How are dependents defined?

A Dependents include children up to age 26, excluding stepchildren and foster children. At least one medical plan option must offer coverage for children through the end of the month in which they reach age 26. Spouses are not considered dependents in the legislation, so employers are not required to offer coverage to spouses.

Q When were the penalties effective?

A The penalties were phased in beginning in 2015, and based on employer size.

As of January 1, 2016, the employer mandate is effective for all employers with 50 or more fulltime and/or FTE employees.

Q How will an employer know if a penalty is due?

A If an employee receives subsidized coverage, the employer should be notified by the Health Insurance Marketplace. The employer will then be provided an opportunity to respond and appeal if the employee was offered coverage that meets the minimum value and affordability standards. The employer will not be contacted by the IRS about penalties for any given year until after individual tax returns and employer information reports on coverage are due, i.e., after tax-filing and reporting dates in any given calendar year.



Q How do penalties apply to companies with a common owner?

A Companies that have a common owner are combined for purposes of determining whether they are subject to the mandate. However, any penalties would be the responsibility of each individual company.

Q How will the federal government know an employer is complying with the employer mandate?

A IRS Code 6056 requires all applicable large employers to file an annual report that ensures compliance with the employer mandate. The reporting will include information on all employees who were offered and accepted coverage, and the cost of that coverage on a month-by-month basis.

Q How will an employer know if they've been assessed a penalty, and how can they appeal or challenge the assessment?

A The IRS will send 226J letters to employers and plan sponsors relating to compliance with the Employer Mandate for a given plan year. These letters assess a financial penalty, called the Employer Shared Responsibility Payment (ESRP), if the IRS believes the employer or plan sponsor did not satisfy their Employer Mandate requirements. Any employer or plan sponsor who receives a 226J letter should take immediate action to develop a response to the IRS within the required 30 days of the letter date. It is important for employers to maintain documents and records to demonstrate compliance, so they may respond to the Letter 226J with accurate data and data corrections on previously reported Forms 1095-C, if applicable. This may help the employer reduce or eliminate the ESRP assessed.

Q Is the initial IRS assessment, Letter 226J, the final notice employers will receive confirming an IRS fine for not complying?

A No, after the Letter 226J is sent to an employer, and the employer responds with documentation of corrected data previously reported on the Forms 1095-C, the IRS will complete their review and send a Notice 220J to the employer. This notice confirms the final penalty amounts being charged, by month. The Notice 220J may also indicate that no penalty is being charged based on the IRS's review of any data or documentation provided by the employer in response to the initial Letter 226J.