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## What new health-care rules mean for employers

The Patient Protection and Affordable Care Act, or ACA, made a number of sweeping changes to our nation's health-care system, including requiring certain employers to provide minimum health-care coverage to their employees or else face stiff penalties.

The federal agencies implementing the ACA (the IRS, Department of Labor and Department of Health and Human Services) recently issued "employer-shared responsibility" or "play-or-pay" rules detailing this requirement.

The play-or-pay rules, which go into effect Jan. 1, 2014, require "large" employers to provide their employees with minimum health-care coverage or face potentially hefty penalties. Large employer status will initially be determined by looking at full-time employee numbers for this year. Impacted employers must take steps now to review their group health plans in order to tackle the impending administrative challenges imposed by the play-or-pay rules.

Are your clients considered "large" employers for purposes of these new rules? Here is an overview of how "large" employer status under the play-or-pay rules is determined and the possible penalties in store for rule breakers.

### Why "large" employer status is important

The play-or-pay rules work in conjunction with new "insurance exchanges" that go into effect in 2014. The play-or-pay rules are intended to encourage large employers to provide minimum levels of health-care coverage to their employees, but if they do not, the employees will be able to buy health insurance on an insurance exchange.

The insurance exchanges are intended to function like most other markets — allowing individuals to shop for insurance by comparing different prices and benefits covered by the plans. Individuals with incomes

between 100 percent and 400 percent of the federal poverty level will be eligible for a premium tax credit to help defray costs for insurance purchased on an exchange.

If full-time employees of a large employer purchase insurance on an exchange, it may subject their employers to penalties — either because the employer does not offer coverage to its full-time employees or offers coverage that is unaffordable or does not provide minimum value.

### Large employer status

An employer that employs on average at least 50 "full-time employees" — including full-time equivalent employees, or FTEs — for a calendar year is a large employer. Each calendar month, employers will need to calculate their number of full-time employees and FTEs. Full-time employees are employees averaging at least 30 hours of service per week in a month or 130 hours a month. FTEs are part-time workers that are, nevertheless, included in the monthly full-time employee count.

To determine the number of part-time employees, or PTEs, that will be considered FTEs, the number of hours worked that month for each PTE — not to exceed 120 hours — is added together and then divided by 120.

**“Impacted employers must take steps now to review their group health plans in order to tackle the impending administrative challenges imposed by the play-or-pay rules.”**

### BY MARTIN J. BISHOP AND LORI L. TAYLOR

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For example, assume an employer has 30 PTEs for a given calendar month that each work 100 hours for the month. The total number of hours worked that month is 100 times 30, which is 3,000 hours. This total is divided by 120, which is 25. Thus, 25 of the employer's 30 PTEs are FTEs for the month.

The number of full-time employees employed by an employer in 2013 will determine the employer's status as a "large" employer in 2014. Thereafter, an employer's large employer status will be determined on Jan. 1 of any particular year. For example, if on Jan. 1, 2017, an employer is considered a large employer, but then averages 40 full-time employees during 2017, the employer is still considered a large employer. The employer's classification would not change until Jan. 1, 2018.

Additional rules apply for employers of a "controlled group" as defined by the Internal Revenue Code. If the controlled group is a large employer, then all members of the group will be treated as a large employer — even if a particular entity employs fewer than 50 full-time employees and FTEs. This may become an issue in the context of mergers and acquisitions.

### Affordable and minimum-value coverage

Large employers may be subject to penalties for failing to offer health-care coverage to their full-time employees or for failing to provide these employees a minimum level of

coverage at an affordable cost.

Coverage is affordable if its premium cost is 9.5 percent or less of the employee's household income. As employers will not know what an employee's household income is, employers have the option of using various "safe harbors" to determine if offered coverage is "affordable." To provide minimum-value coverage, employers must pay for at least 60 percent of the total allowed cost of benefits provided under the coverage.

### Penalty payments

Penalties will be imposed on large employers that do not provide affordable and minimum-value coverage if at least one full-time employee receives a premium tax credit for purchasing insurance on an insurance exchange. The amount of the penalty payment will depend on how an employer broke the play or pay rules.

If an employer fails to offer coverage to at least 95 percent of its full-time employees, the penalty is the number of full-time employees employed during the year, minus 30, multiplied by \$2,000. So if an employer that failed to offer coverage had 5,000 full-time employees, the penalty would be 5,000, minus 30, times \$2,000 — or \$9,940,000.

If an employer offers coverage to at least 95 percent of its full-time employees, but the coverage offered was unaffordable or did not provide minimum value, the penalty is computed for each month in which unaffordable or insufficient coverage is provided.

The penalty is the number of full-time employees who received a premium tax credit for the month at issue, multiplied by \$250 (\$3,000 divided by 12), or the number of full-time employees for the month, minus 30, multiplied by one-twelfth of \$2,000, whichever is less.

Although the play-or-pay rules do not take effect until Jan. 1, employers should start determining now whether the rules will impact them in order to best mitigate future expenses.