

Employer Penalty Proposed Regulations Issued

January 11, 2013

The IRS issued proposed regulations under the Patient Protection and Affordable Care Act ("PPACA") regarding the employer penalty that will be effective in 2014. Generally, the employer penalty may be assessed if (1) the employer has not offered "affordable" coverage that provides "minimum value" to full-time employees and dependents and (2) a full-time employee receives a government subsidy in connection with a health plan provided by an exchange established under PPACA. The proposed regulations contain a number of clarifications and new guidance. For example, hours of service for purposes of determining whether an employee averages 30 hours per week includes paid vacation and paid leaves of absence. Future rules may be issued regarding the treatment of short-term employees; however, there are no special rules for high-turnover positions. An employer may not render an employee ineligible for a government subsidy by enrolling the employee in mandatory coverage that does not provide "minimum value" in an attempt to avoid the penalty. An employer will be treated as offering coverage to its full-time employees and their dependents if it offers coverage to all but 5 percent or, if greater, 5 of its full-time employees and their dependents, and thus avoid the penalty for a failure to offer coverage to all full-time employees; however, the employer could still be liable for a penalty if one of the excluded full-time employees receives a government subsidy. "Dependents" includes dependent children under age 26, but not spouses. An employer can use a "Form W-2," "rate of pay," or a "federal poverty line" safe harbor for determining whether coverage is "affordable." Finally, transition relief was provided for group health plans with non-calendar plan years so that employers who meet certain requirements will not be liable for a penalty with respect to the time period between January 1, 2014, and the start of the plan year in 2014. The proposed regulations can be found [here](#).