

CLIENT ALERT

**EMPLOYER MANDATES UNDER
THE PATIENT PROTECTION AND AFFORDABLE CARE ACT**

December 1, 2010

On March 30, 2010, President Obama signed into law H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act, [P.L. 111-152](#)), thus completing a massive overhaul of the U.S. health care system affecting nearly all taxpayers, many employers, and many elements of the health care industry. The Reconciliation Act modifies legislation signed into law on March 23, 2010 that contains the bulk of the health reform law, H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act, [P.L. 111-148](#)).

This Client Alert provides an overview of the employer requirement to offer health coverage in the health reform legislation.

The recently enacted health overhaul legislation requires certain employers to offer and contribute to their workers' health insurance or pay a penalty. Under the new law, effective for months beginning after December 31, 2013, a large employer that does not offer coverage for all its full-time employees, offers minimum essential coverage that is unaffordable, or offers minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, is required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee. Here are the details:

Who is subject to the employer mandate? Only an "applicable large employer," defined as someone who employed an average of at least 50 full-time employees during the preceding calendar year, is subject to the requirement to offer coverage. Most small businesses, since they have fewer than 50 employees, are thus exempt from the employer requirement. In counting the number of employees for purposes of determining whether an employer is an applicable large employer, a full-time employee (meaning, for any month, an employee working an average of at least 30 hours or more each week) is counted as one employee and all other employees are counted on a pro-rated basis. However, even an employer with 50 or more employees isn't subject to the penalty for not offering coverage if the employer doesn't have any full-time employees who are certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.

Penalty for employers not offering coverage. An applicable large employer who fails to offer its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan for any month is subject to a penalty if at least one of its full-time employees is certified to the employer as having enrolled in health insurance coverage purchased through a state exchange with respect to which a premium tax credit or cost-sharing reduction is allowed or paid to the employee. The penalty for any month is an

excise tax equal to the number of full-time employees over a 30-employee threshold during the applicable month (regardless of how many employees are receiving a premium tax credit or cost-sharing reduction) multiplied by one-twelfth of \$2,000. For example, if an employer fails to offer minimum essential coverage and has 60 full-time employees, ten of whom receive a tax credit for the year for enrolling in a state exchange-offered plan, the employer will owe \$2,000 for each employee over the 30-employee threshold, for a total penalty of \$60,000 (\$2,000 multiplied by 30 (60 minus 30)). This penalty is assessed on a monthly basis.

Penalty for employers that offer coverage but have at least one employee receiving a premium tax credit. An applicable large employer who offers coverage but has at least one full-time employee receiving a premium tax credit or cost-sharing reduction is subject to a penalty. The penalty is an excise tax that is imposed for each employee who receives a premium tax credit or cost-sharing reduction for health insurance purchased through a state exchange. For each full-time employee receiving a premium tax credit or cost-sharing subsidy through a state exchange for any month, the employer is required to pay an amount equal to one-twelfth of \$3,000. The penalty for each employer for any month is capped at an amount equal to the number of full-time employees during the month (regardless of how many employees are receiving a premium tax credit or cost-sharing reduction) in excess of 30, multiplied by one-twelfth of \$2,000. For example, if an employer offers health coverage and has 60 full-time employees, 15 of whom receive a tax credit for the year for enrolling in a state exchange-offered plan, the employer will owe a penalty of \$3,000 for each employee receiving a tax credit, for a total penalty of \$45,000. The maximum penalty for this employer is capped at the amount of the penalty that it would have been assessed for a failure to provide coverage, or \$60,000 (\$2,000 multiplied by 30 (60 minus 30)). Since the calculated penalty of \$45,000 is less than the maximum amount, the employer pays the \$45,000 calculated penalty. This penalty is assessed on a monthly basis.

Requirement to offer "free choice vouchers." After 2013, employers offering minimum essential coverage through an eligible employer-sponsored plan and paying a portion of that coverage will have to provide qualified employees with a voucher whose value could be applied to purchase of a health plan through the Insurance Exchange. Qualified employees would be those employees: who do not participate in the employer's health plan; whose required contribution for employer sponsored minimum essential coverage exceeds 8%, but does not exceed 9.8% of household income; and whose total household income does not exceed 400% of the poverty line for the family. The value of the voucher would be equal to the dollar value of the employer contribution to the employer offered health plan. Employers providing free choice vouchers will not be subject to penalties for employees that receive a voucher.