



Employer *Bulletin*

Employer Communication Center (608) 266-3285 Toll free: 1-877-533-5020 <http://etf.wi.gov>

REVISED December 2, 2013 - Specifically, the effective date in the first paragraph and the text in the third paragraph have been deleted and replaced with four new paragraphs including a federal citation.

Information Regarding the Federal Patient Protection and Affordable Care Act

This *Employer Bulletin* is to notify employers of the federal “pay or play” legislation, also known as the Shared Responsibility for Employers mandate. This proposed regulation is currently scheduled to be effective **January 1, 2015**, as a part of the Patient Protection and Affordable Care Act (PPACA).

This bulletin focuses on the question of “unaffordable coverage.” Employers are responsible for certain calculations and applicable penalties. We recommend that you discuss these aspects, including the effect of this law, with your tax/legal advisor. The Department of Employee Trust Funds (ETF) has no administrative responsibility in this matter.

The U.S. Department of the Treasury (Treasury) informed ETF that for the purposes of the Shared Responsibility for Employers mandate, each local municipality will be required to determine its own full-time employee count. Any assessable penalty payments would be attributed only to applicable large employers with at least 50 full-time employees. A full-time employee is defined under the general rule as one employed at least 30 service hours per week.

This is per the federal register issued January 2, 2013 (link below), page 221, that reads in pertinent part under Explanation of Provisions I., A., 2., Application of Aggregation Rules,

“... Until further guidance is issued, government entities, churches, and a convention or association of churches may rely on a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer (emphasis added).”

Section 414 (b), (c), (m) and (o) controlled and affiliated service groups consist of corporations; trade groups such as partnerships; affiliated entities who are a group of related employers who have a service relationship that may include ownership; and organizations who perform management functions on a regular and continuing basis for a recipient organization. Thus, based upon this regulation and ETF’s discussion with staff from the Treasury, municipal employers in our health insurance program will be evaluated by the Internal Revenue Service based upon their individual number of full-time employees as they are not a part of a controlled or affiliated service group. Participating in the State of Wisconsin Group Health Insurance Program does not constitute such an affiliation.

Insurance may be deemed “unaffordable” if a given employee’s cost for single coverage exceeds 9.5% of their income (as reported in box 1 of their W-2), and if that employee qualifies for a premium subsidy under the exchanges, among other criteria.

We suggest that you determine whether any of your employees would be deemed as having “unaffordable coverage”. If so, you may be assessed a penalty of \$250 per month per applicable full-time employee (up to \$3,000 per year). **Note:** If you have full-time employees who are not WRS eligible, yet are eligible for health insurance, the law also applies to them.

Here are a few scenarios in which a penalty could be assessed:

1. An employer does not contribute to a full-time employee's (as defined above) health insurance coverage until after 90 days of the employee becoming eligible for coverage. Federal law requires that coverage be offered to employees no later than 90 days after they become eligible for coverage (not hire date). When read in conjunction with the pay or play mandate, if you do not contribute toward the employee's health insurance premium prior to the passing of the 90 day window, you may become liable for the penalty due to offering unaffordable coverage for the period prior to the start of employer contribution.
2. An employer contributes, for a full-time employee (as defined above), the minimum of 50% of the low cost qualified plan in the service area of the employer. For example, in 2013 the lowest cost single rate in local program option 2 is Unity UW's at \$504.10 per month. A full time employee with 50% employer contribution would pay \$252.05 for single coverage. If the employee's salary is less than \$31,837.89 (\$2,653.16/month) and they qualify for a subsidy, the premium would exceed 9.5% of their income and the penalty could be assessed.

Note: The Federal Register (Vol. 78, No. 1, dated January 2, 2013; see link below) provides information on how to calculate the penalty. After reviewing the sections on options for "look-back/stability periods" (beginning on page 218) and reviewing how to identify full-time employees (beginning on page 221), pay particular attention to section V., B., Affordable Coverage, which begins on page 233. This section describes several safe harbors employers can choose from to perform the affordability test. Note: The WRS one year look-back period appears allowable under this regulation.

Reference Links:

The federal register on Employer Shared Responsibility from January 2, 2013 is at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>

A subsequent correction to this Notice of Proposed Rulemaking is at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-15/pdf/2013-05954.pdf>

One of several pertinent IRS FAQs is at:

<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

Other Items of Note: You may have read about the Patient Centered Outcome Research Institute (PCORI), Reinsurance and Health Insurance Provider fees under PPACA. These fees will be paid by the applicable health plan or ETF (as plan sponsor) on or before due dates.

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment. If you are speech or hearing impaired and need assistance, call the Wisconsin Relay Service toll free at 7-1-1 or 1-800-947-3529 (English) 1-800-833-7813 (Español). If you are visually or cognitively impaired, call 1-877-533-5020 or (608) 266-3285 locally. We will try to find another way to get the information to you in a usable form.

This *Employer Bulletin* is published by the Wisconsin Department of Employee Trust Funds. If you have any questions, please contact the Employer Communications Center toll free at 1-877-533-5020 or locally at (608) 266-3285. Employer agents may copy this *Bulletin* for further distribution to other payroll offices, subunits or individuals who may need the information. Copies of the most recent *Employer Bulletins* are available on our Internet site at <http://etf.wi.gov/employers.htm>.

Wisconsin Department of Employee Trust Funds
P.O. Box 7931
Madison, WI 53707-7931

<http://etf.wi.gov>