

Overview ACA Employer Penalties

Employer Shared Responsibility Penalties - 2015 and 2016 Section 125 Plan Years

Who is at risk for a penalty, when does it take effect, and what are the triggers?		
Employer Size	2015 Plan Year Requirements	2016 Plan Year Requirements
<50 FTE employees	N/A	N/A
50-99 FTE employees	N/A	Offer coverage to 95% of full-time employees
100+ FTE employees	Offer coverage to 70% of full-time employees	Offer coverage to 95% of full-time employees

How are penalties calculated?		
Category	2015 Plan Year Impact (100+ FTE only)	2016 Plan Year Impact (50+ FTEs)
Failure to Offer Coverage	Annual penalty of \$2,080 (assessed on a monthly basis and adjusted for inflation) for each full time employee, less the first 80 employees	Annual penalty of \$2,160 (assessed on a monthly basis and adjusted for inflation) for each full time employee, less the first 30 employees
Failure to Offer Coverage to all full-time employees	Penalty above applied if coverage is not extended to 70% of full-time employees and their dependent children	Penalty above applied if coverage is not extended to 95% of full-time employees and their dependent children
Unaffordable Employee-only Coverage (9.5% of income)	Penalty is the lesser of the above calculation, or \$3,120 per employee (assessed on a monthly basis) receiving a tax credit on the exchange.	Penalty is the lesser of the above calculation, or \$3,240 per employee (assessed on a monthly basis) receiving a tax credit on the exchange.

- To our knowledge, all VEHI groups qualify for transitional relief and should follow their Section 125 plan year (January 1st or July 1st for most VEHI groups) along with their FTE count as they evaluate their shared responsibility penalty exposure
- All VEHI plans provide minimum essential and minimum value coverage.
- Employers with less than 50 full time employees face no immediate penalties
- Employers with between 50 and 99 full time employees (calculated including full-time equivalents) face potential penalties beginning in their 2016 plan year if eligible for transition relief.
- Employers with between 100 full time employees (calculated including full-time equivalents) face potential penalties beginning with their 2015 plan year
- Shared responsibility penalties for failure to offer coverage apply if at least one full time employee receives premium assistance on the exchange.
- Penalty amounts are subject to an annual inflation adjustment in later years.

Abuse Penalties - Tied to employer actions as opposed to a date

- Abuse penalties are punitive in nature, and typically amount to **\$100 per impacted employee, per day of violation**
- Intended to be applied when a group is actively avoiding clear responsibilities under the ACA
 - Examples of violations may include allowing waiting periods exceeding 90 days, failure to incorporate an ACA-requirement into a health plan, or incenting employees to participate in taxpayer funded programs using cash-in-lieu of benefits

Excise Tax - Calendar year 2018 for all groups

- Effective beginning January 1, 2018 (regardless of 125 plan year) and will apply to all employer sizes and plan types, with initial thresholds of \$10,200 for single coverage cost and \$27,500 for family coverage cost.
 - A one-time health care adjustment may be made to the initial thresholds if actual increases in the cost of health care increases from 2010 to 2018 exceed a federally established benchmark.
 - After 2018, the dollar amounts will be subject to cost-of-living adjustments.
 - Plan costs thresholds will be adjusted to account for qualified retirees along with an age and gender dollar adjustment (subject to change each year).
 - Age and Gender adjustments will likely cause thresholds for VEHI members to rise, given the profile of the group
- Excise tax of 40% is applied to the excess benefit over and above the applicable threshold at any time during the calendar year
- "Value of coverage" includes medical and prescription drug coverage, employee and employer contributions to a health FSA, employer contributions to an HRA, and employer and employee contributions to an HSA.