

WILLIAMS MULLEN

HEALTH CARE REFORM

AFFORDABLE CARE ACT: “PAY OR PLAY” COMPLIANCE CONCERNS FOR EMPLOYERS

Beginning in 2015, employers that do not offer adequate health coverage to full time employees may face penalties under the Patient Protection and Affordable Care Act (the “ACA”). “Applicable large employers” that do not offer affordable, minimum value health coverage may owe significant monthly penalties.

With the so-called “play or pay” rules in effect, employers face the following questions:

Q: Is my company subject to ACA “play or pay” rules?

A: The play or pay rules apply to employers that employed on average at least **100 full-time employees** (including full-time equivalent employees) in 2014. Employers that employ at least 50 full-time employees in 2015 will be subject to the play or pay rules in 2016.

Q: Does my group health plan comply with the ACA “pay or play” rules?

A: Applicable large employers must offer health coverage that is “affordable” and that provides “minimum value.” A plan is “affordable” if it costs no more than **9.5%** of an employee’s household income. A plan offers minimum value if it covers, on an aggregate basis, at least **60%** of benefit costs.

Q: How do I determine which employees must be offered health coverage?

A: Coverage must be offered to employees who work, on average, at least 30 hours per week (“full-time employees”). There are two options for identifying “full-time employees”: (1) the **monthly measurement method**; and (2) the **look-back measurement method**. An employer must correctly apply one of these two methods.

Q: What is the penalty risk if my company does not offer any health coverage?

A: If at least one “full-time employee” purchases subsidized health coverage through an ACA Marketplace, the employer will face a monthly penalty equal to **\$167 multiplied by the number of the employer’s “full-time employees” in excess of 80 (or 30 for years after 2015)**.

Q: What is the penalty risk if my company offers health coverage, but it is not “affordable” and/or does not provide “minimum value”?

A: The employer would owe a monthly penalty equal to **\$250** for each “full-time employee” who purchases subsidized health coverage through an ACA Marketplace.

Q: Are there IRS reporting requirements related to the “pay or play” rules?

A: Employers must report their compliance on **Forms 1094-C and 1095-C**. These forms require monthly tracking of employee enrollment.

A: Employers failing to comply face penalties of **\$100 for each missing return**, up to a maximum of **\$1.5 million**.

Health Care Reform Team



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Brydon DeWitt's practice focuses on all areas of employee benefits law, including qualified pension plans, welfare plans, Affordable Care Act compliance, HIPAA health information privacy and security, stock-based compensation, and benefits issues arising in mergers and acquisitions.

His experience includes advising clients with respect to ERISA, tax and securities law aspects of qualified retirement plans; providing advice regarding the HIPAA health information privacy standards and designing comprehensive HIPAA privacy policies, business associate agreements, plan amendments, forms and guides; and advising clients on COBRA continuation coverage issues regarding group health plans.

Brydon leads the firm's Health Care Reform Team advising clients with respect to the Affordable Care Act, including plan design, plan amendments, notice and disclosure, reporting, compliance strategies, and the employer shared responsibility or "play or pay" mandate.

Brydon has designed and advised clients with respect to flexible benefit plans. He has prepared proxy and disclosure for shareholder approval of stock incentive plans and plan amendments. He has experience with stock options and other types of equity-based compensation. He has participated in ERISA litigation and designed change in control and severance benefit arrangements.



Our team is comprised of a cross-practice group of attorneys from our Healthcare, Employee Benefits, Tax, Labor and Employment and Government Relations sections. Because this law is complicated and developments are ongoing, our team monitors Affordable Care Act developments from every angle. Whether it's through email alerts, seminar, webinars or a personal meeting, our approach is to clearly explain the impact on your business and our goal is to provide you with an integrated solution that achieves your strategic objectives. You will find that most of our Health Care Reform Team members are lawyers because you not only need someone who understands the Act's nuances but also someone who knows how best to protect you under the law. So whether you are a business trying to assess the minimum essential health coverage or a provider grappling with reimbursement considerations, the Williams Mullen Health Care Reform Team can help you now.



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