

The Employer Mandate of the Patient Protection Affordable Care Act

An Alliance for Health Reform Toolkit
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Fast Facts

- Employers with more than 50 full-time employees (those who work 30 or more hours a week) must offer insurance to workers beginning in 2015 or pay a \$2,000 per employee penalty, if any worker gets a coverage subsidy through a state health insurance exchange.¹
- Employer-provided insurance coverage must be affordable and cost no more than 9.5 percent of the employee's income.² If it is more, the employee may seek coverage on the exchange and the employer will pay a \$3,000 penalty for each of those workers.³
- The mandate was originally scheduled for implementation in 2014, but the Obama administration in July 2013 delayed it for one year to give employers more time to comply with the law.⁴
- Small employers (those with fewer than 50 workers) are exempt from the penalties.⁵
- The percentage of individuals with employment-based coverage was 55.1 percent in 2011, down from 55.3 percent in 2010, 56.1 percent in 2009, and 65.1 percent in 2000.⁶

Most employers in the United States offer health insurance benefits to their workers. In 2013, 99 percent of companies with 200 or more employees, and 57 percent of firms with 3 to 199 employees, offered coverage.⁷

Many employers started offering coverage to employees during World War II as a way to recruit and retain workers. And not only can employers deduct health benefits for their employees from their taxes,⁸ the cost of those benefits is excluded from workers' incomes. This exclusion is the nation's largest tax expenditure, totaling \$177 billion in fiscal year 2011.⁹

While employer coverage levels remain high, an increasing number of firms have cut health insurance because of rising costs. In 2011, more than 170 million individuals had employment-based health benefits (55.1 percent of the population), but that is down 11.8 million from 2000, when employers covered 65.1 percent of the population.¹⁰

In 2013, the average annual premium for employer-based family coverage was \$16,351, which is 4 percent higher than the previous year and about twice as high as in 2002.¹¹

The Patient Protection and Affordable Care Act (ACA) contains an incentive for employers to offer affordable health benefits. Starting in 2015, employers with more than 50 full-time employees are required to offer health coverage or pay a \$2,000 fee per full-time employee, if any employee receives a subsidy through the state insurance exchange. The first 30 employees are excluded from the calculation of the fee.¹²

Employers don't have to pay a penalty for employees who work fewer than 30 hours per week, but they still have to consider them to determine if they fall under the insurance mandate. For example, if a firm employs 40 full timers who work 30 or more hours a week and 20 part timers who put in 15 hours a week, those part timers may push the company over the 50-employee threshold, making the firm subject to the mandate.¹³

The law also requires that the insurance be affordable. The plan must pay for at least 60 percent of typical health expenses. Further, if an employee has to pay more than 9.5 percent of his income for the plan's premium, then he has the option of looking for subsidized coverage through the state-based exchange. If the employee does so, his employer will be assessed a \$3,000 penalty. The penalty applies only if one or more workers receive subsidized coverage through an exchange.¹⁴

Originally, the ACA required the employer mandate to begin in 2014, but the Obama administration in July of 2013 delayed the requirement for one year until 2015. Administration officials said that they wanted more time to simplify reporting requirements, at the request of employers.¹⁵

Critics of the employer mandate say that, rather than being an incentive to keep coverage, the policy will instead drive employers to drop coverage. They say the expense of health insurance and changes in tax law will make it cheaper to send employees to the health exchanges and pay the penalty, rather than pay for insurance.¹⁶ Proponents of the law counter that surveys show little evidence that employers plan to drop coverage.¹⁷ A June 2013 Mercer survey of companies with 500 or more employees found that 7 percent plan to stop offering medical benefits.¹⁸

Critics have also said the mandate will cost millions in jobs because company funds that could have paid salaries will instead have to be used to finance insurance.¹⁹ Further, they say it will cause companies to turn full-time positions into part-time slots to avoid the mandate. The state of Virginia, for example, recently told part-time state employees that their hours would be cut to ensure they don't hit the full-time threshold.²⁰

RESOURCES

Explanation of the Employer Mandate

You Ask, We Answer: Here's how Obamacare's employer mandate works

Kliff, Sarah. *The Washington Post*, April 15, 2013

<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/04/15/you-ask-we-answer-heres-how-obamacares-employer-mandate-works/>

This story explains the employer mandate through a series of questions from readers about how the employer mandate may impact their business.

Health Care Changes

Business USA, Aug. 1, 2013

<http://business.usa.gov/healthcare>

This website, launched in conjunction with the White House, explains to businesses how the employer mandate works. The White House describes this site as “a web-based tool that allows employers to get tailored information on how the health law may affect them based on their business’ size, location, and plans for offering health benefits to their workers next year.”

Employer Responsibility Under the Affordable Care Act

Kaiser Family Foundation, July 13, 2013

<http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

This is a clear graphic illustrating how the employer mandate works and which companies fall under the mandate. It includes information about penalties for companies that don’t comply with the law.

Implementing Health Reform: The Employer Mandate

Jost, Timothy. *Health Affairs*, December 29, 2012

<http://healthaffairs.org/blog/2012/12/29/implementing-health-reform-the-employer-mandate/>

This post explains the employer mandate and links to the multiple IRS guidance papers and proposed regulations for complying with the law. It explains the definition of a full time employee and affordable coverage. It also outlines the penalties.

Proposed Rule Clarifies Employer Mandate Calculations

Miller, Stephen. Society for Human Resource Management, July 3, 2013

<http://www.shrm.org/hrdisciplines/benefits/articles/pages/employer-mandate-proposed-rule.aspx>

This document provides guidance to employers about how to implement the employer mandate and determine if a company is subject to the requirement. The author poses a set of questions and answers, published by the Internal Revenue Service, and addresses such details as requirements regarding seasonal workers.

Summary of the New Health Reform Law

Kaiser Family Foundation, 2010

www.kff.org/healthreform/8061.cfm

This document provides an easy-to-understand explanation of all of the requirements and timetables under the health care law, including mandates that impact small, medium and large employers.

Impact of the Employer Mandate on Workers

Health care law is tied to new caps on work hours for part-timers.

Somashekhar, Sandhya. *The Washington Post*, July 23, 2013

http://articles.washingtonpost.com/2013-07-23/national/40737111_1_health-law-health-insurance-health-care-law

In this story, the reporter interviews part-time employees impacted by the health law and examines the overall impact of the employer mandate and its delay on the labor market. The story determines that the law is hurting some part-time employees' ability to obtain more work.

Definition of Full-Time Becomes A Sticking Point In Obamacare

Rovner, Julie. Kaiser Health News and National Public Radio, July 31, 2013

<http://capsules.kaiserhealthnews.org/index.php/2013/07/definition-of-full-time-becomes-a-sticking-point-in-obamacare/>

The author looks into the definition of full-time employment and how proponents and opponents of the law have opposing views on the definition. The report explains why the definition is important and its impact on employment.

The White House Claim That Obamacare Is Not Reducing Full-Time Employment

Kessler, Glenn. *The Washington Post*, July 22, 2013

http://www.washingtonpost.com/blogs/fact-checker/post/the-white-house-claim-that-obamacare-is-not-reducing-full-time-employment/2013/07/21/e67a4254-f240-11e2-8505-bf6f231e77b4_blog.html#pagebreak

This article delves into the Obama administration's assertion that the employer mandate isn't hurting jobs growth as critics of the law argue. The reporter looks at the economic data and talks to economists to determine whether the administration is accurate. The bottom line is that it remains difficult to discern if the law is having negative impact or not.

Will Companies Stop Offering Health Insurance Because of the Affordable Care Act?

Thurm Scott. *The Wall Street Journal*, June 16, 2013

<http://online.wsj.com/article/SB10001424127887323582904578488781195872870.html>

This article conducts a question and answer with several economists and labor market analysts to get a sense of what employers are thinking about the employer mandate and whether it will impact their decision to offer health benefits. The article looks at what happened in Massachusetts when the state imposed an employer mandate, which increased the number of people getting employer-sponsored benefits.

Job Creation and the Affordable Care Act

Bernstein, Jared. On the Economy: Facts, Thoughts and Commentary by Jared Bernstein, July 3, 2013

<http://jaredbernsteinblog.com/job-creation-and-the-affordable-care-act-have-little-to-do-with-each-other/>

The author, a senior fellow at the Center for Budget and Policy Priorities and former economic advisor to Vice President Joe Biden, analyzes economic data and jobs market data and concludes that the employer mandate has not had an impact on the jobs market.

Employer Mandate Penalties In The New Healthcare Law

National Federation of Independent Business, November 15, 2011

<http://www.nfib.com/research-foundation/cribsheets/employer-mandate>

In this document, the small business lobbying group analyzes the employer mandate and concludes that it will discourage business growth because money will need to be spent on accountants to comply with the law, rather than on building business.

CBO and JCT's Estimates of the Effects of the Affordable Care Act on the Number of People Obtaining Employment-Based Health Insurance

Congressional Budget Office, Joint Committee on Taxation, March 2012

<http://www.cbo.gov/publication/43082>

In this analysis, the Congressional Budget Office and Joint Committee on Taxation project the impact of the employer mandate on employment-based health coverage. The analysts predicted a small decrease in the number of those obtaining employee-based benefits as a result of the law, and they explain in detail how they reach that conclusion.

The IRS Interprets the Employer Mandate, and Businesses Have Questions

Mandelbaum, Robb. *The New York Times*, July 23, 2013

http://boss.blogs.nytimes.com/2013/07/23/the-i-r-s-interprets-the-employer-mandate-and-businesses-have-questions/?_r=0

This story looks at the IRS's efforts to explain and detail the regulations related to the employer mandate and how to implement it correctly and notes there are still plenty of questions about how the law works.

Are CBO Estimates on the Future of Employment-Based Coverage Under PPACA Moving Toward the Herd Mentality?

Fronstin, Paul. Employee Benefit Research Council. March 30, 2012

<https://ebriorg.wordpress.com/2012/03/30/starting-small/>

This blog post explains the March 2012 CBO/JCT findings above and gathers information and analysis from other surveys of employers on how they are responding to the employer mandate. The surveys suggest that while most have no plans to drop insurance, they might consider doing so if other companies start to discontinue their coverage.

Broken Promise: Why ObamaCare Will Force Americans to Lose the Health Care Coverage They Have And Like

Camp, Rep. David. House Ways and Means Committee Majority Staff, May 1, 2012

http://waysandmeans.house.gov/uploadedfiles/fortune_100_report_5_1_12.pdf

Staff of this key House committee reached out to 100 top executives at Fortune 500 companies. Of the 71 who responded, 85 percent said that they expected health care costs to keep rising and indicated that they could save billions of dollars by dropping their employer-sponsored insurance. The committee concluded that the law provides a perverse incentive for employers to drop their coverage.

The Labor Market Impact of Employer Health Benefit Mandates: Evidence From San Francisco's Health Care Security Ordinance

The National Bureau of Economic Research and the Robert Wood Johnson Foundation.

Colla, Carrie, et al. July 2011

<http://www.rwjf.org/content/dam/web-assets/2011/07/the-labor-market-impact-of-employer-health-benefit-mandates->

This paper looks at the labor market impact of an employer mandate requiring businesses in San Francisco to provide health insurance or pay into a public fund if they choose not to do so. The study found that the mandate had more of an impact on consumer prices for services than on the labor market itself.

Employer Sponsored Health Insurance, Down But Not Out

Christianson, Jon B., et al. Center for Studying Health System Change. October 2011

<http://2fwww.newpublichealth.org/content/dam/web-assets/2011/10/employer-sponsored-health-insurance>

This study, based on interviews with employers across the country, discusses the impact of the recession and the expected 2014 implementation of the health care law on businesses. Companies spoke of shifting health costs to employees and projected that responses to the mandate would vary depending upon state implementation of the health law and local labor market conditions.

Health Reform Law 101: Employer Mandate

U.S. Chamber of Commerce

<http://www.uschamber.com/health-reform/employer-mandate>

This well-known business lobbying group details how the employer mandate works and provides several scenarios to help illustrate which businesses would need to comply and which would not and how much the mandate could cost. This webpage includes links to articles that conclude that the health care law will cost jobs.

Delaying the Mandate

Continuing to Implement the ACA in a Careful, Thoughtful Manner

Mazur, Mark J. Treasury Notes, U.S. Department of the Treasury, July 2013

<http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner.aspx>

This is the official blog post from the U.S. Treasury Department delaying the employer mandate for one year. The delay “will allow us to consider ways to simplify the new reporting requirements consistent with the law [and] ... provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees,” according to the post.

It’s No Contest: The ACA’s Employer Mandate Has Far Less Effect on Coverage and Costs Than The Individual Mandate

Blumberg, Linda, et al. Urban Institute, July 2013

<http://www.urban.org/UploadedPDF/412865-ACA-Employer-Mandate.pdf>

This report considers the Obama administration decision to delay the employer mandate by one year and its impact on the uninsured and concludes that because so many people already work at large companies that offer insurance, the impact will be minimal. It also found that if the government also delayed the individual mandate, the impact would be huge and many fewer people would seek insurance.

A Misleading Obamacare Poll Courtesy of the U.S. Chamber of Commerce and Harris Interactive

Kessler, Glenn. *The Washington Post*, July 31, 2013

http://www.washingtonpost.com/blogs/fact-checker/post/a-misleading-obamacare-poll-courtesy-of-the-chamber-of-commerce-and-harris-interactive/2013/07/30/26e5f51c-f94a-11e2-8e84-c56731a202fb_blog.html

The reporter examines a poll that has been widely used by congressional Republicans to argue that despite the delay in the employer mandate, at least a quarter of small businesses are already cutting hours and jobs in response to the health law. A closer look of the poll shows that 83 percent of small businesses expected to feel no impact from the law and just 4.5 percent to 8.5 percent of small businesses expected to reduce staff and hours.

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Government

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Bureau of Labor Statistics <http://www.bls.gov/>

Business USA <http://business.usa.gov/healthcare>

Congressional Budget Office <http://www.cbo.gov>

Congressional Research Service <http://www.loc.gov/crsinfo/>

Department of Health and Human Services www.dhhs.gov

Department of Labor www.dol.gov

General Accountability Office www.gao.gov

House Budget Committee <http://budget.house.gov/>

House Education and the Workforce Committee <http://edworkforce.house.gov/>

House Ways and Means Committee <http://waysandmeans.house.gov/>

Internal Revenue Service: <http://www.irs.gov/>

Joint Committee on Taxation <https://www.jct.gov/>

Senate Budget Committee <http://www.budget.senate.gov>

Senate Finance Committee <http://www.finance.senate.gov/>

Senate Health, Education, Labor and Pensions Committee <http://www.help.senate.gov/>

Other

Employee Benefit Research Institute: www.ebri.org

BenefitsLink: www.benefitslink.com

Council on Employee Benefits: <http://www.ceb.org/>

International Foundation of Employee Benefit Plans: www.ifebp.org

National Business Coalition on Health: www.nbch.org

U.S. Chamber of Commerce: www.uschamber.org

ENDNOTES

¹ Kaiser Family Foundation (2010). "Summary of the New Health Reform Law." Retrieved from www.kff.org/healthreform/8061.cfm ; Kaiser Family Foundation (July 13, 2015) "Employer Responsibility Under the Affordable Care Act." Retrieved from: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

² Kliff S., *Washington Post* (April 15, 2013) Retrieved from: <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/04/15/you-ask-we-answer-heres-how-obamacares-employer-mandate-works/>

³ Kaiser Family Foundation (2010). "Summary of the New Health Reform Law." Retrieved from www.kff.org/healthreform/8061.cfm ; Kaiser Family Foundation (July

13, 2015) “Employer Responsibility Under the Affordable Care Act.” Retrieved from: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

⁴ Mazur, Mark J. (July 2013). Continuing to Implement the ACA in a Careful, Thoughtful Manner. Retrieved from: <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx>

⁵ Kaiser Family Foundation (2010). “Summary of the New Health Reform Law.” Retrieved from www.kff.org/healthreform/8061.cfm ; Kaiser Family Foundation (July 13, 2015) “Employer Responsibility Under the Affordable Care Act.” Retrieved from: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

⁶ U.S. Census Bureau (2012). “Table C-3. Health Insurance Coverage by Age: 1999 to 2011.” Retrieved from <http://www.census.gov/prod/2012pubs/p60-243.pdf>

⁷ 2013 Employer Health Benefits Survey (August 2013). Kaiser Family Foundation. Exhibit H. Retrieved from: <http://kff.org/report-section/2013-summary-of-findings/>

⁸ O’Brien, Ellen, (2003). “Employers’ Benefits from Workers’ Health Insurance.” *Milbank Quarterly*, Retrieved from http://www.milbank.org/uploads/documents/featured-articles/html/Milbank_Quarterly_Vol-81_No-1_2003.htm.

⁹ Office of Management and Budget. “Analytical Perspectives, Budget of the United States Government, Fiscal Year 2011.” p 211, Retrieved from <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/receipts.pdf>

¹⁰ U.S. Census Bureau (2012). “Table C-3. Health Insurance Coverage by Age: 1999 to 2011.” Retrieved from <http://www.census.gov/prod/2012pubs/p60-243.pdf>

¹¹ 2013 Employer Health Benefits Survey (August 2013). Kaiser Family Foundation. Exhibit B. Retrieved from: <http://kff.org/report-section/2013-summary-of-findings/>

¹² Kaiser Family Foundation (2010). “Summary of the New Health Reform Law.” Retrieved from www.kff.org/healthreform/8061.cfm ; Kaiser Family Foundation (July 13, 2015) “Employer Responsibility Under the Affordable Care Act.” Retrieved from: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

¹³ Miller, S. Society for Human Resource Management. (January 2, 2013 and updated July 3, 2013) “Proposed Rule Clarifies Employer Mandate Calculations” Retrieved from: <http://www.shrm.org/hrdisciplines/benefits/articles/pages/employer-mandate-proposed-rule.aspx>

¹⁴ Kaiser Family Foundation (July 13, 2015) “Employer Responsibility Under the Affordable Care Act.” Retrieved from: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

¹⁵ Mazur, Mark J. (July 2013). Continuing to Implement the ACA in a Careful, Thoughtful Manner. Retrieved from: <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx>

¹⁶ Dinan, S. (Feb. 5, 2013) “7 Million Will Lose Insurance Under Health Law.” *The Washington Times*. Retrieved from: <http://www.washingtontimes.com/blog/inside-politics/2013/feb/5/obama-health-law-will-cost-7-million/>

¹⁷ Fronstin, P. (March 30, 2012) “Are CBO Estimates on the Future of Employment-Based Coverage Under PPACA Moving Toward the Herd Mentality? Retrieved from: <https://ebriorg.wordpress.com/2012/03/30/starting-small/>

¹⁸ <http://m.mercer.com/press-releases/1533040?detail=D>

¹⁹ Cathcart, S. (January 28, 2009) National Federation of Independent Business. “Employer Mandate Would Wipe Out 1.6 Million Jobs.” Retrieved from:

<http://www.nfib.com/press-media/press-media-item?cmsid=48480>

²⁰ Somashekhar, S. (July 23, 2013) “Health care law is tied to new caps on work hours for part-timers.” *The Washington Post*. Retrieved from:

http://articles.washingtonpost.com/2013-07-23/national/40737111_1_health-law-health-insurance-health-care-law