

## HEALTH CARE REFORM: TAXING EMPLOYERS – PART I: INTRODUCTION

Employers may be required to offer group health coverage that is affordable and worth a minimum value, based on requirements of the Affordable Care Act (ACA). Based on Internal Revenue Code section 4980H, employers that do not offer qualifying coverage may incur a tax penalty. This provision is applicable as of the first day of the plan year that begins in 2014. This *Briefing* provides a simplified overview of these issues, but does not provide a comprehensive explanation of all of the regulations and exceptions. Part II of this *Briefing* provides clarification on some of the key definitions related to these regulations. Additionally, your Keenan representative can provide you with additional resources should you have a question regarding any specific aspect of these complex issues.

### **DETERMINING IF PENALTIES APPLY TO AN EMPLOYER**

1. **Does the employer have at least 50 full-time<sup>1</sup> (or full-time equivalent employees)?**
  - Yes – Proceed to question #2.
  - No – Considered a small employer and penalties do not apply.<sup>2</sup>
2. **Does the employer offer coverage to 95% of full-time employees (and dependents)**
  - Yes – Proceed to question #3.
  - No – **Penalty may apply** if at least one employee receives a cost sharing subsidy in an Exchange or a premium tax credit. Penalty will be \$2,000 times the entire number of full-time employees in the workforce (minus 30).
3. **Does medical insurance offered pay for at least 60% of covered health care expenses for a typical population?**
  - Yes – Proceed to question #4.
  - No – **Penalty may apply**, as this does not meet the determination of minimum value. Employees can choose to purchase coverage in an Exchange and receive a premium tax credit. Penalty is \$3,000 for each employee who opts out of employer coverage, purchases coverage on the Exchange and receives a Federal subsidy to assist with that purchase.
4. **Do employees have to pay more than 9.5% of their family income for the employee-offered coverage (single-only coverage)?**
  - Yes – **Penalty may apply**, as this does not meet the determination of affordability. Employees can choose to purchase coverage in an Exchange and receive a premium tax credit. Penalty is \$3,000 for

<sup>1</sup> For purposes of the ACA only, full-time employee is defined as an employee who earns, on average, 30 hours of service in a week or 130 hours of service in a month (or equivalent for salaried employees).

<sup>2</sup> Employers with 25 or fewer employees and an average wage of \$50,000 may be eligible for a health insurance tax credit.

each employee who opts out of employer coverage, purchases coverage on the Exchange and receives a Federal subsidy to assist with that purchase.

- No – No Penalty, as the coverage would be considered affordable.

## SAFE HARBORS

Full-time status must be determined on a monthly basis and predicting whether health coverage is affordable would require employers to know an employee's household income. Therefore, the proposed regulations have created a number of safe harbors that employers may use as alternatives to tracking employee hours of service earned each month and predicting employee household income.

### Safe-Harbor – Full-Time Employee

In lieu of tracking hours on a monthly basis, the employer has the option to use a “look-back measurement method” whereby it looks back over a period of up to 12 months (in increments of 6, 9 or 12 months), identifies full-time and non-full-time employees based on hours of service earned for that period. The resulting full-time or part-time determination may be applied to that employee for up to the next 12 months.

### Safe-Harbor – Affordability

Rather than trying to predict an employee's household income, there are three affordability safe harbors available:

1. **Form W-2** – The employee's contribution for the calendar year for the employer's lowest cost self-only coverage does not exceed 9.5% of that employee's Form W-2 wages from the employer for the calendar year.
2. **Rate of Pay** – The employee's contribution for a calendar month for the lowest cost self-only coverage does not exceed 9.5% of an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period.
3. **Federal Poverty Line Safe Harbor** – For a calendar month, the employee's required contribution does not exceed 9.5% of the Federal Poverty Line for a single individual for the calendar year divided by 12. In 2013, this is approximately \$88.23 per month.

If the employer satisfies any one of the affordability safe harbors, it will not be subject to an Assessable Payment even if the Exchange determines that the employer coverage was actually unaffordable with respect to that employee's Household Income.

Keenan is aware of the complexity of the decisions that our clients face related to the Affordable Care Act. The questions included in this *Briefing* are only an overview; in-depth analysis of your benefit program and practices should be conducted to ensure that you are in compliance with these complicated and detailed regulations. Your Keenan Service Team can assist you with these critical evaluations. If you have any questions regarding this *Briefing*, please contact your Keenan representative.

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