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Prepare for Health Exchange Notifications of Employees Eligible for Subsidies

Employers and healthcare exchanges will need to be prepared for a number of challenges ahead related to premium subsidies under the Patient Protection and Affordable Care Act (PPACA). Among other things, starting in 2015 exchanges will have to provide a notice to employers that identifies by name any employees who have applied for and have been determined by exchange administrators as eligible for premium subsidies. The notice from the exchange will alert the employer that a shared responsibility payment may be assessed by the IRS and that the employer has a right to appeal to the exchange and provide information to the IRS. Instructions on how to appeal will be included in the employer exchange notice. Future guidance is expected on the structure of this employer notice. Because of the tax implications, it will be essential that employers have a procedure in place for dealing with these notices.

Subsidies and Employer Penalties. Beginning in 2015, certain large employers may be subject to employer shared responsibility “pay or play” penalty taxes for failing to offer minimum essential coverage (MEC) to full-time employees, or for offering MEC that is unaffordable or doesn’t meet minimum value (MV). For more information, see our update, “[Employer Mandate Rules Begin 2015](#)”. The penalty tax is due if any full-time employee is certified as having purchased health insurance through an exchange with respect to which a premium tax credit or cost-sharing reduction is allowed or paid to the employee. Under the healthcare reform law, an employee is eligible for the premium tax credit beginning in 2014 if they meet certain income requirements and if they are not able to get affordable coverage through an eligible employer plan that provides MV. See this [IRS webpage](#) for a summary of the rules for how an individual gets a premium tax credit. Keep in mind that employees who are eligible for Medicaid will not be eligible for tax credits, which means that employers will not face penalties on these employees. Under the PPACA, individuals earning up to 138% of the federal poverty level are Medicaid-eligible, so only employees earning from 138% to 400% of the federal poverty level are eligible for a tax credit and could impact employer penalties.

Exchange Notice to Employer of Premium Tax Credit. [Final regulations](#) on exchange eligibility and exchange standards give exchanges the authority to decide who is eligible for tax credits and whether employers are providing appropriate coverage. This notice may be challenging for exchanges, as the information available might not always be accurate or up to date. In addition, the rules permit individuals to self report to the exchange whether they are covered through their employer. If an individual enrolling through an exchange is determined to be eligible for a premium tax credit or cost-sharing reductions because the individual’s employer does not provide

MEC through an eligible employer-sponsored plan, or because the employer provides coverage but it is not affordable or does not meet MV, the exchange must notify the employer. The exchange notice must identify the employee, indicate that the employee has been determined eligible for advance payments of the premium tax credit, and indicate that the employer may be liable for a shared responsibility payment. The notice is not expected to provide the exact reason for eligibility, or to provide any tax return information to the employer. The notice will also inform employers of their right to appeal a determination of an employee's premium subsidy eligibility. Additional guidance regarding the content of the notification is expected to be released in the future.

Employer Exchange Interaction. In order to remain compliant, employers must be prepared to interact with exchanges quite frequently, including receiving notifications about employees seeking exchange coverage, appealing determinations as needed, and fulfilling new reporting requirements. For more information on the health coverage reporting requirements, see our update, "[Information Reporting – Draft Instructions Released](#)". Dealing with these exchange notices will be critical starting in 2015. The exchanges will be sending notices for every employee that receives a premium tax credit, and some of these employees may be part-time employees or other employees that are not eligible for coverage and would not make the employer liable for paying the tax penalty. But if a full-time employee eligible for affordable MV coverage receives a premium tax credit on the exchange, the employer may be subject to a tax penalty unless they appeal. Also, if an employer receives a notice and doesn't appeal, the employee could get the wrong tax credit and the employee will have a tax lien against them eventually. Because of the tax implications, it is essential that employers have a procedure in place for dealing with these notices.

Responding to Exchange Notices. Employers will need to be prepared to start receiving these exchange notices in 2015 and beyond. Employers will need to have an appeal procedure/process in place for dealing with these notices. This could be particularly burdensome for multi-state employers as they might have to contend with different exchange appeal rules depending on where employees reside. Employers will only have 90 days to appeal an exchange's determination of eligibility for the premium tax credit, so procedures should be set up immediately, including:

- Identifying key employees who will be responsible for timely analyzing and responding to exchange notices and questions
- Communicating with all locations and establishing a process to ensure the notices are circulated to the correct team to respond (exchanges will send the notice to whatever address the employee provides)
- Ensuring systems are programmed for the ability to pull the required data to track and respond to notices
- Coordinating with employees, exchanges, and the IRS on an appropriate appeals process in order to minimize administrative burdens, ensure proper verifications, and protect against erroneous penalties.

As regulators continue to develop regulations and provide needed guidance, large employers should continue to monitor these rules and develop appropriate administrative procedures. Please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220 with any questions. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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