Tax Penalties for Individuals Who Do Not Purchase Coverage and Large Employers That Do Not Offer It

The Patient Protection and Affordable Care Act (ACA) includes provisions that would require individuals to have health insurance. While this element of the health reform law has generated significant controversy, Congress felt that such a requirement is crucial to ensuring that the reform law works as intended. Without a requirement to purchase insurance, healthy individuals would delay or decide not to purchase insurance, creating a risk pool comprised primarily of sick enrollees who would drive up the cost of coverage and destabilize the insurance market.

Beginning in January 2014, non-exempt individuals will be subjected to a modest penalty, administered through the tax system, if they do not have "minimum essential coverage." This is defined as coverage provided through a public insurance plan such as Medicare, an employer-sponsored plan, a plan purchased in the individual market, or a plan established prior to March 23, 2010. Any individual who does not acquire coverage will have to pay a fine:

- Starting in 2014, the flat fee fine is phased-in: $95 per adult (up to $285 per family) or 1.0 percent of total income, whichever is greater.
- In 2015, the flat fee is $325 per adult (up to $975 per family) or 2 percent of family income, whichever is greater.
- In 2016, the penalty is the greater of either $695 (up to $2,085 per family) or 2.5 percent of family income.
- After that, the mandate penalty will be adjusted based on cost of living.

Some people will be exempt from the fine, including:

- Those with religious objections
- American Indians
- People who have been uninsured for less than 3 months
- Undocumented immigrants, who are also prohibited from enrolling in Medicaid, receiving tax credits for health insurance, or purchasing exchange-based coverage with their own money.
- Incarcerated individuals
- People for whom the lowest-cost health plan in their area would exceed 8 percent of their income
- People whose income is below the tax filing threshold (for Tax Year 2012 the threshold for those under age 65 was $9,750 for single individuals and $19,500 for couples filing jointly)
- Those experiencing a short gap in health coverage, i.e., less that 3 consecutive months
- A 2013 regulation clarifies that Medicaid-eligible individuals will not have to pay a penalty if their state decides not to expand Medicaid coverage pursuant to the Supreme Court's decison

The law prohibits those who fail to pay the penalty from being criminally prosecuted, or subject to any liens or property levies. Individuals may need to seek an exemption notice from the health insurance marketplace (for religious exemption) for their home state, or apply for an exemption through the tax filing process (for certain hardship exemptions).

Employer Assessment

The ACA requires that starting in January 2014, large employers who fail to provide affordable, comprehensive health insurance for their employees would be required to pay a penalty if they have at least one full-time employee receiving a premium tax credit. However, the Obama Administration delayed this requirement until January 2015.

Which employers will be required to pay the assessment?

- Large employers with at least 50 full time employees who do not provide affordable, comprehensive health insurance for their employees may have to pay an assessment.
- A full-time employee is defined as person who works an average of at least 30 hours per week.
    - Small businesses – those with less than 50 employees – would be exempt from the requirement.
    - There are also exemptions for employers who hire a high number of seasonal workers. In this case, an employer will not be considered to have more than 50 employees if they employ at least 50 full-time employees for 120 days or less and the excess employees during the 120 day period are seasonal workers.
- Part-time employees are also counted to determine the size of an employer's workforce. The number is determined by dividing by 120 the aggregate number of hours worked by part-time employees in one month. The resulting number is added to the number of full-time employees.

How much will employers have to pay?

- Eligible employers who do not offer qualified insurance to their employees and have at least one full-time employee receiving a premium tax credit to purchase Exchange-based health care will have to pay $2,000 per full-time employee.
- Additionally, firms that do offer coverage but have at least one full-time employee receiving premium tax credits to purchase Exchange-based insurance will be required to pay the lesser of $3,000 for each credit-receiving employee or $2,000 for each full-time employee.
- In both cases, the first 30 employees are excluded from the assessment formula; for example, in a firm with 50 full-time employees, the firm would have to pay a fine for 20 employees.

Anything else required of employers?

- The law also requires large employers with over 200 employees to automatically enroll employees into the health insurance plans they offer. Employees are allowed to opt-out of their employer's coverage.
    - The intent of this provision is to increase the number of people with health coverage and to ensure that large employers currently offering coverage continue to do so, rather than drop coverage and choose to pay the employer assessment, which would increase the federal government's financial burden.

How did the United States Supreme Court rule on this provision?

The ACA's penalties on people who do not buy qualified coverage, often referred to as the "individual mandate," was included in the law to help spread risk, reduce adverse selection, and to achieve universal health coverage. While the guaranteed issue and pre-existing coverage protections remain among the most popular provisions of the ACA, the individual mandate has attracted immense controversy amongst the public and lawmakers. Reflecting this controversy, the Supreme Court began hearing arguments in a lawsuit brought by 26 states for and against the ACA in March 2012 and ruled on the various challenges to the law in June 2012.

On the subject of the individual mandate, the Court ruled by a 5-4 margin that the penalties on people who do not buy qualified coverage was constitutional, arguing that it is consistent with Congress's power of taxation. In the majority opinion, Chief Justice John Roberts wrote, "In this case, however, it is reasonable to construe what

Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress's power to tax."[i]

The Court found, however, that it would be unconstitutional for Congress to *require* people to buy coverage.

[i] http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf