

Insight Driven Health

As employer mandate requirements expand, penalty exposure could reach \$31 billion

Accenture analysis finds employers, unable to determine and report their employees' coverage, could face total penalty exposure nearly 50 percent higher than original estimates.

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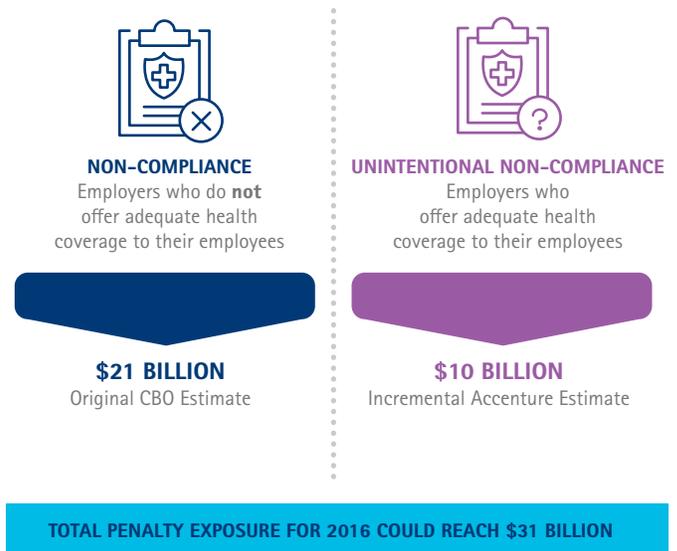
Employers must demonstrate adequate health coverage to avoid penalty exposure

According to the [employer mandate](#) of the Patient Protection and Affordable Care Act (PPACA), employers who fail to offer health coverage to their employees will face penalties. The Congressional Budget Office (CBO) has projected that non-compliant employers (those not offering coverage) may face \$21 billion in penalties for the upcoming 2016 tax reporting period.¹

However, Accenture analysis of data provided by [Tango Health](#) has identified a new segment of employers, deemed the "unintentionally non-compliant," whose penalty exposure could amount to an additional \$10 billion during the same period.² This group represents employers who offer compliant health coverage, yet fail to meet the Internal Revenue Service (IRS) reporting requirements needed to demonstrate compliance under the law.

In total, employer penalty exposure could reach \$31 billion for 2016, nearly 50 percent greater than originally estimated.

Figure 1: Total employer penalty exposure



Source: Accenture analysis

¹ Reports from the 2016 tax reporting period will be generated in 2017. The 2016 reporting period will determine penalty payments to be collected in 2018. <https://www.cbo.gov/publication/51385>

² See methodology section for additional information about the analysis

Understanding the details of the law is critical to ensuring compliance

Employers with more than 50 full-time employees are subject to the employer mandate. These employers face two potential penalties (See Figure 2):

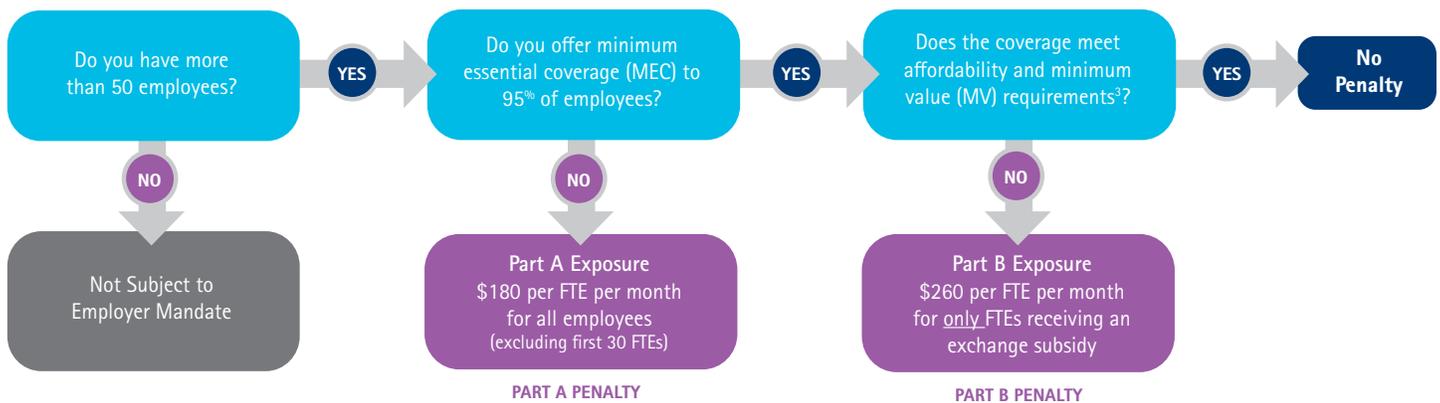
1. The "Part A" penalty

Employers must offer health insurance benefits that meet minimum essential coverage (MEC) requirements to at least 95 percent of their employees, and dependents up to age 26, for 2016. Those who fail to meet this requirement face potential penalty exposure of \$2,160 annually per employee for all full-time employees, excluding the first 30 full-time employees.³

2. The "Part B" penalty

Employers that meet the 95 percent MEC threshold could still face penalty exposure, if they fail to meet either minimum value⁴ or affordability⁵ requirements included in the law. If a full-time employee is offered coverage that does not meet these requirements and obtains subsidized insurance from a public health insurance exchange, the employer will incur a penalty of up to \$3,120 annually per affected full-time employee.

Figure 2: Assessing penalty exposure



Source: Accenture analysis

To demonstrate compliance, employers must provide accurate reporting to the IRS. Since the employer mandate requires coverage for all employees who work 30 hours or more, employers will first need to identify their employees who fall into this category. Based on this definition, many employers will need to re-examine their legacy employee classifications to accurately report full-time and part-time status.

Employers will next need to determine if each employee was offered coverage that meets the MEC, minimum value and affordability requirements. In addition, each employer must report whether the employee accepted or waived coverage.

Based on this information, the employer assigns a combination of IRS reporting codes to a given employee in a given month: The first code provides information about the offer of coverage (e.g., employee and dependents were offered MEC coverage). The second code provides information about the coverage decision (e.g., employee enrolled in coverage or waived coverage)

or indicates that the employee was not a full-time employee for that month. If the employee waived coverage, the second code can also be used to invoke one of the "safe harbors" defined by the IRS to ensure that penalties are not applied for the month. Since this information can change frequently, employers need to monitor the status of each employee every month to ensure that the right code combination is assigned.

What employers don't know may still hurt them

Because employers have not yet incurred penalties, there is limited awareness of the federal reporting requirements. Employers were first required to submit reports in early 2016 (for the 2015 tax reporting period). In this initial year, employers were required to show that MEC coverage was offered to at least 70 percent of employees.

Given that this was the introductory year, the IRS has indicated that penalties will not be assessed for those employers who demonstrated "good faith" in submitting the required information. Penalties will be assessed by the end of 2016, and the CBO has currently estimated that penalties (collected in 2017) will be up to \$11 billion.

For the upcoming 2016 tax reporting period, employers will need to demonstrate MEC coverage was offered to 95 percent of employees. This is a considerable increase and leaves little room for error. Accenture's analysis shows that the increase in this threshold could lead to as much as \$10 billion in penalty exposure. Since it is unclear the IRS will continue "good faith" exceptions, employers need to determine a reporting approach to avoid penalties.

³ To trigger the Part A penalty, at least one employee must apply for and obtain subsidized coverage from a public health insurance exchange.

⁴ Minimum value requires that a plan cover at least 60 percent of the total allowed cost of benefits that are expected to be incurred.

⁵ Affordability requires that an employee's premium be no more than 9.5 percent of employee's annual household income. The IRS has provided [three safe harbors](#) to assist in meeting affordability requirements.

Steps toward employer compliance and avoiding penalties

Given the magnitude of potential penalties, employers should have a solution in place today to minimize exposure. The following actions can help employers become more compliant with the law:



Assess the current state

- **Is there an approach in place?**
Companies without an approach must move rapidly to develop a sustainable approach to avoid penalties for next year.
- **Is data available at a monthly level?**
Reporting is not a year-end process. Given the potential frequency with which employees' status may change, companies should generate reports monthly and then aggregate these reports at year-end.
- **Is tracking being done at the Employer Identification Number (EIN) level?**
Companies with multiple EINs should ensure that data could be reported to the IRS at the EIN level.



Check for common organizational pain points

- **Unlinked data systems:**
Employers must develop a data strategy and solution for unifying demographics, benefits and time-reporting data, which are often stored in disparate systems.
- **30-hour workforce:**
The employer mandate applies to employees who have a 30-hour work week, meaning that traditional part-time definitions will likely not produce accurate results. Companies with 30-hour workforces need to conduct a lookback analysis for their workforce or attempt to meet one of the safe-harbor requirements established by the IRS.
- **Analysis across distinct tax entities:**
Data systems must be linked at the EIN level. Furthermore, if benefits are different for each EIN, then affordability and minimum value calculations will need to be conducted separately for each benefit set.
- **M&A activity:**
Companies that have engaged in M&A activity could be exposed. Leaders should develop an integration plan in which both companies have a clear strategy to maintain the ability to report data accurately as workforces are merged.



Define and execute a go-forward approach

- **Redefine ACA ownership:**
Human resources has traditionally managed ACA compliance, given the impact to employee benefits. To minimize penalty and fully mitigate risk, companies should consider adopting a matrix approach that also spans finance and compliance.
- **Consider solutions from third parties with specialized expertise:**
To meet legal requirements and reduce future penalty exposure, employers should consider working with a partner that has an established approach and technology platform to accelerate activities.
- **Take action now:**
To avoid penalties for the 2017 reporting year, a solution must be in place and tracking employees by January 1, 2017 to accurately report in 2018.

Employer reporting will persist

Tax penalties will ultimately fall to the discretion of federal policymakers and regulators. Many health policy proposals rely on employer reporting. Initial implementation will require investment, but consolidating data across disparate systems presents a unique opportunity to create a complete picture of an organization's employee population, in addition to minimizing the potential costs of noncompliance.

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Methodology

Accenture conducted an analysis of anonymized data provided by Tango Health. Tango Health provides software and services to help enterprises achieve, maintain and report on ACA compliance. Tango provided data from a "what-if" analysis of their current employer population to determine penalty exposure if the MEC threshold for 2015 was theoretically moved from 70 percent to 95 percent. Penalty exposure was then compared to total establishments based on longitudinal data from the U.S. Census controlling for employer size. The estimate was modified to account for overlap with employers included in the original CBO estimate. In this analysis and otherwise, neither Accenture nor Tango are intending to provide legal advice or recommendations. Enterprises should consult with their legal counsels to ensure and manage overall compliance with ACA and other laws and regulations.

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