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## HUMAN RESOURCES & PAYROLL

# New Healthcare Penalty Can Sneak Up on Employers

Effective midway through this year -- July 1, 2015, to be exact -- certain employers that pay the health insurance premiums of its employees will be assessed hefty fines for their generosity.

**Ken Berry** • Jul. 07, 2015

Most of the main deadlines for the Affordable Care Act (the ACA) have already come and gone. The individual mandate to obtain at least essential minimum health insurance was triggered on January 1, 2014, while the requirement for large employers went into effect on January 1, 2015. After two delays, the employer health insurance for many small-to-mid-sized firms will finally kick in on January 1, 2016.

But another deadline has flown under the radar: Effective midway through this year — July 1, 2015, to be exact — certain employers that pay the health insurance premiums of its employees will be assessed hefty fines for their generosity.

Under the ACA, certain other legislative sections relating to group health insurance plans offered by employers are incorporated into the tax code. Accordingly, if a small-to-mid-sized employer offers extra compensation or reimbursement to employees instead of providing a group plan, the IRS will impose a penalty on the employer (Notice 2013-54).

How much is the penalty? It's a staggering \$100 per day per employee for each failure. In other words, the penalty for just one employee would be \$36,500 if the payments

covered an entire year. The maximum penalty under this provision is \$500,000. In contrast, the penalty for a firm that doesn't comply with the employer health insurance mandate is only \$2,000 per employee per year.

Because it took extra time to get the Small Business Health Options Program (SHOP) fully operational, the IRS postponed any imposition of the penalty for small-to-mid-sized firms with at least 50 full-time employees (Notice 2015-17). The delay extended through all of 2014 and all the way until June 30, 2015. But now the reprieve is over. Starting July 1, 2015, these firms are on the clock and could be liable for the penalty.

There's still a ray of hope. The Small Business Healthcare Relief Act – introduced by Rep. Charles Boustany (Rep.-LA) and Mike Thompson (Dem.-CA) in the House and Sen. Charles Grassley (Rep.-IA) and Heidi Heitkamp (Dem.-ND) in the Senate – would allow employees to use pre-tax dollars in health reimbursement accounts (HRAs) to acquire health insurance without the employer being penalized. The proposed law includes several other benefits in the health care sector.

“Since the landmark health care reform legislation was passed, we've focused too much time trying to undermine the law, and far too little time working to build on its important reforms so that all Americans can afford health insurance,” said Thompson in a press release. “This bipartisan legislation moves past party politics, fixes an important part of the health care law, and improves choice and affordability. By building on the reforms made in the Affordable Care Act, like this legislation does, we can make sure every American can afford to go to the doctor – and that's what matters.”

If enacted, this legislation might retroactively wipe out any penalties for employers. We'll keep a close watch on the proceedings.

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