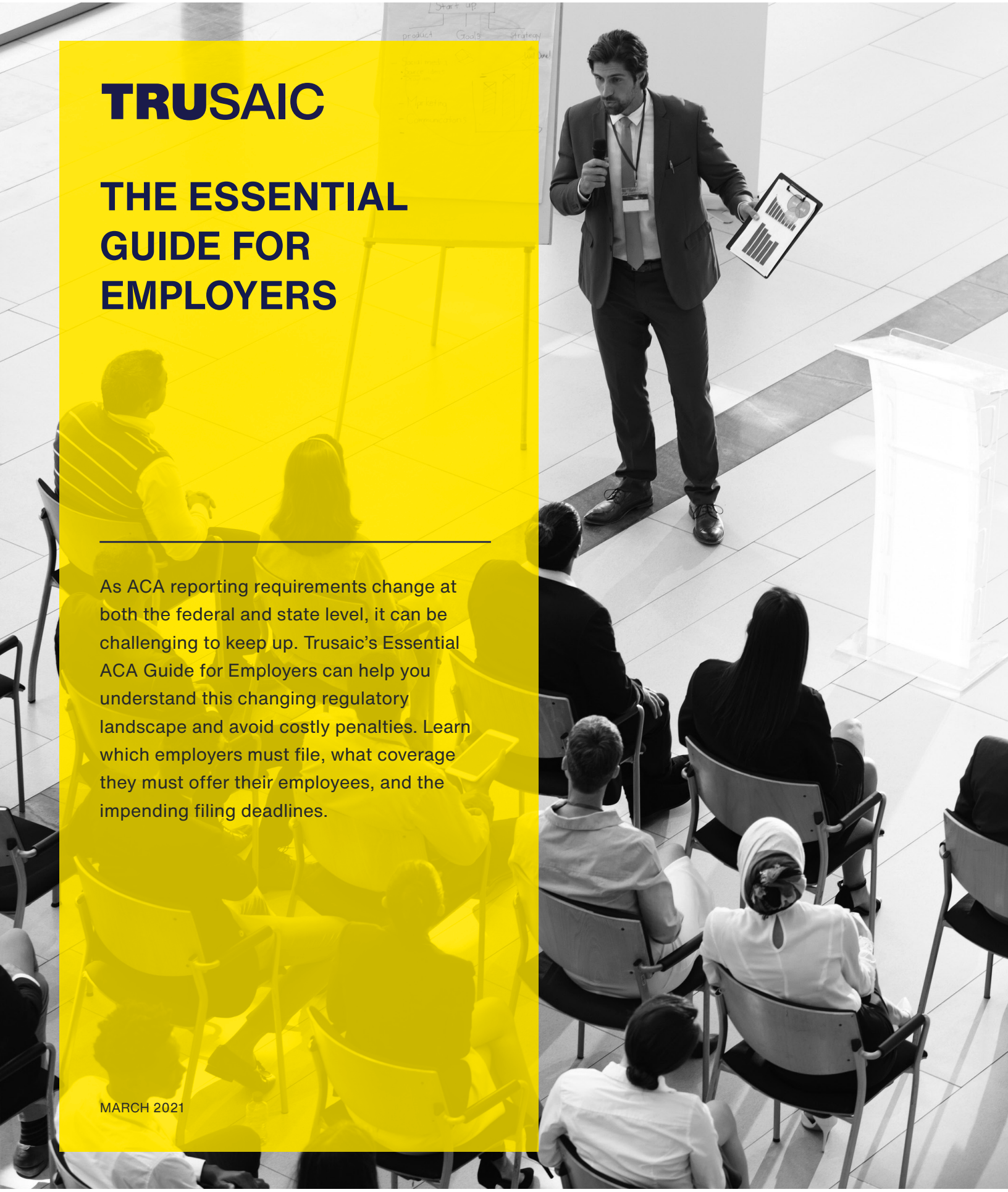

TRUSAIC

THE ESSENTIAL GUIDE FOR EMPLOYERS

As ACA reporting requirements change at both the federal and state level, it can be challenging to keep up. Trusaic's Essential ACA Guide for Employers can help you understand this changing regulatory landscape and avoid costly penalties. Learn which employers must file, what coverage they must offer their employees, and the impending filing deadlines.

MARCH 2021

TRUSAIC

The Employer Mandate Under the Affordable Care Act

At the time it was enacted in 2010, the implementation of the Patient Protection and Affordable Care Act (the "ACA"), (Public Law No. 111-148), represented the largest set of tax law changes in more than 20 years and affected millions of taxpayers.

The ACA Employer Mandate went into effect on January 1, 2015. In 2016, the Congressional Budget Office projected there would be $228 billion in penalties from employers who failed to offer coverage, or offered inadequate coverage, to their full-time employees.

Enforcement of the Employer Mandate by the IRS began in November 2017, with Letter 226J tax penalty notices being issued to employers who failed to comply with the ACA requirement to provide 2015 tax reporting information. Enforcement has since expanded to the 2016, 2017 and 2018 tax years, with subsequent tax years to come. As the vast majority of employers with more than 50 employees provide some form of health coverage (more than 89%), it is critical for these employers to understand and carefully navigate the ACA's complex regulatory landscape while ensuring that their offer of coverage satisfies the ACA legal mandate without unduly bloating healthcare costs. Implementing ACA best practices requires a working understanding of the risks and costs of ACA. To that end, we've developed this overview of ACA regulations relating to tax penalties, reporting, and disclosure obligations.[1]

Who Does It Cover?

Applicable Large Employers with at Least 50 Full-time or Full-time Equivalent Employees

The Employer Mandate set forth in the ACA applies to all "Applicable Large Employers" (ALEs). These are employers who employed (in the preceding tax year) an average of at least 50 full-time or full-time equivalent employees on business days during the preceding calendar year (see 26 U.S.C. §4980H(c)(2)(A)). Notably, employers must look back to the preceding tax year to determine whether they are deemed ALEs for the current year. Certain exceptions may apply if the workforce (a) exceeds 50 full-time or full-time equivalent employees for 120 days or fewer per calendar year, and (b) the employees that cause the workforce to exceed 50 are "seasonal workers."[2]

To determine whether an employer is an ALE, both full-time and full-time equivalent employees are counted. A full-time employee averages at least 30 hours of service per week. To calculate full-time equivalent employees, monthly service

hours for all non-full-time employees are totaled, then divided by 120. When full-time and full-time equivalent subtotals are added together and total more than 50, the employer is deemed an ALE.[3]

For a particular calendar year, an employer's ALE status is determined based on the number of its full-time plus full-time equivalent employees in the preceding year. For example, an employer's ALE status in 2016 is determined based on the employer's 2015 employee-count data.

An important consideration in determining ALE status is that the ALE includes all persons who are treated as being employed by one employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 ("IRC") (see IRC Section 414(b), (c), (m), and (o)). This means employees of related companies — e.g., within the same controlled group of corporations, trades or businesses under common control or within the same affiliated service group — will be treated as employees of a single employer. Accordingly, if two or more companies are related and have a combined total of 50 full-time or full-time equivalent employees, they will be treated as one ALE, with each component company an ALE member.

Applicable Large Employers must offer health coverage to all employees working at least 30 hours a week or face the risk of penalties.

All predecessors and successors of an employer must also be included as part of the ALE (see 26 C.F.R. Section ("IRC Rule") 54.4980H-1(a)(16)). However, the terms "predecessor" and "successor" are not defined by the IRS Final Regulations, and, instead, are left as reserved (see IRC Rule 54.4980H-1(a) (36); see also Fed. Reg. Vo.79, No. 29 (Feb. 12, 2014) ("Final Regulations"), at 8548). The Treasury Department and the IRS continue to consider development of rules for identifying a predecessor employer (or the corresponding successor employer), and until further guidance is issued, taxpayers may rely upon a reasonable, good faith interpretation of the statutory provision on predecessor (and successor) employers for purposes of the ALE determination.

"For this purpose, use of the rules developed in the employment tax context for determining when wages paid by a predecessor employer may be considered as having been paid by the successor employer (see § 31.3121(a)(1)–1(b)) is deemed reasonable" (see Final Regulations, at 8548). An IRC Rule in the employment wages context reflects that in a corporate acquisition, the acquirer may be deemed a predecessor (see IRS Publication 15 (2017) noting under "successor employer" that "[w]hen corporate acquisitions meet certain requirements, wages paid by the predecessor are treated as if paid by the successor for purposes of applying the social security wage base and for applying the Additional Medicare Tax withholding threshold...").

A: Determining Full-Time Status of Employees

Under the Employer Mandate, an Applicable Large Employer (ALE) is required to offer coverage to its full-time employees as defined by the ACA. The IRS has provided method guidance for employers to determine whether an employee is averaging at least 30 hours per week, and therefore considered full-time. These methods

include the Monthly Measurement Method and the Look-Back Measurement Method (see Final Regulations).

The Monthly Measurement Method can be applied to standard salaried employees. The Look-Back Measurement Method, with its measurement and stability periods methodology, may be more effective for the complexities of variable-hour employees.

Under the Look-Back Measurement Method, the employer would determine each employee's full-time status by looking back at a defined period of not less than three, but not more than 12, consecutive calendar months (the measurement period), to determine whether the employee averaged at least 30 hours of service per week (or at least 130 hours of service per calendar month) during the measurement period.

All employees, including part-time, seasonal and variable hour, must be analyzed to determine whether an employer is an Applicable Large Employer and whether the Employer must offer coverage to the employee.

For an employee who was determined to be full-time during the measurement period, they would also be treated as full-time during a subsequent "stability period" — a period of at least six consecutive calendar months immediately following the measurement period and no shorter than the measurement period.

If the employee was determined not to be full-time during the measurement period, the employer may treat the employee as not full-time during a stability period that followed the measurement period.

Note: The stability period cannot exceed the measurement period. For example, if the employer chose a measurement period of eight months to determine its full-time employees, the stability period would immediately follow the measurement period and would also be eight months long.

What Kind of Coverage Must Be Provided?

Employers Must Offer "Minimum Essential Coverage" that has "Minimum Value" and is "Affordable."

To avoid penalties, the Employer Mandate requires an ALE to offer "Minimum Essential Coverage" to "all"[4] full time employees and their dependents[5] and that such offer of coverage satisfy "Minimum Value" and "Affordability" for the employee for each month.

Minimum Essential Coverage is specifically defined to include Government Sponsored Pro-

The affordability analysis also applies to an employee's spouse and anyone else eligible to enroll in the plan by virtue of his or her relationship to the employee.

grams, Eligible Employer Sponsored Programs, Plans in the Individual Market and Grandfathered Health Plans that were in effect on the date of the ACA's enactment (2010) (see 26 U.S.C. §5000A(a) and (f); 26 U.S.C. §36B).

Government Sponsored Programs include the Medicare program under Part A of Title 18 of the Social Security Act, the Medicaid program under Title 19 of the Social Security Act, the CHIP program under Title 21 pf the Social Security Act, medical coverage under chapter 55 of Title 1-, including TRICARE, veteran's health care under chapter 17 of Title 38, and a health plan under Section 2504(e) of Title 22 (relating to Peace Corps volunteers).

Failure to satisfy Minimum Essential Coverage subjects the ALE to penalties under 26 U.S.C. §4980H(a).

A. Minimum Value

The ALE offering Minimum Essential Coverage must also satisfy "Minimum Value" standards to avoid penalties under 26 U.S.C. §4980H(b). Minimum Value means that the "plan's share of the total allowed costs of benefits provided under the plan" is at least "60% of such costs."

B. Affordable

Employers offering Minimum Essential Coverage must also ensure that the employee's portion of the insurance premium is "Affordable" (see 26 U.S.C. §36B). To be affordable, the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan may not exceed 9.5% of the applicable taxpayer's household income. The Exchanges[6] calculate affordability based on Household Income[7] when determining whether an individual seeking health coverage through the Exchange is eligible for a tax subsidy.

This 9.5%[8] cap translates to an affordable premium cap for self-only coverage at $123.50 per month for a $10 per hour "full-time" employee who is assumed to work a 30-hour week, 52 weeks a year. That employee (assuming a household size of one) would earn an annual salary of $15,600, which is below 138% of the Federal Poverty Level (FPL) (at $17,608.80 for the 2020 year).[9]

Note that the affordability analysis also applies to an employee's spouse and anyone else eligible to

enroll in the plan by virtue of his or her relationship to the employee (see 26 U.S.C. §36B(c)(2)(i) "This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee"). However, for purposes of determining whether any penalties will be assessed on an ALE, it is the employee's self-only coverage that is relevant for the affordability analysis.

Which Employees Are Subject to Tax Penalties?

All Employees Not Holding Minimum Essential Coverage Are Subject to Fines

Under the ACA, all citizens or lawful residents, subject to certain exemptions, were required to have Minimum Essential Coverage. The ACA's Individual Mandate had required an applicable individual to have Minimum Essential Coverage for himself or herself and dependents (see IRC Section 5000A(a)). Failure to do so would subject the individual to a tax penalty assessed for every month of the reporting year without Minimum Essential Coverage.[10]

Tax Penalty Chronology

- The federal tax penalty was applied starting in 2014 at the rate of $95 per adult and $47.50 per child with a family maximum of $285, or 1% of income above the filing threshold — whichever was greater.
- For 2015, the tax penalty increased to $325 per adult and $162.50 per child with a family maximum of $975, or 2% of income above the filing threshold — whichever was greater.
- For 2016, 2017 and 2018, the tax penalty increased to $695 per adult and $347.50 per child with a family maximum of $2,085, or 2.5% of income above the filing threshold — whichever was greater.[11]
- Effective January 1, 2019, the ACA Individual Mandate penalty was reduced to $0 (see Tax Cuts and Jobs Act, P.L. No. 115-97, Section 11081(a)). However, in response to the zeroing of the ACA Individual Mandate, a number of states/jurisdictions have imposed their own individual mandates, including California, New Jersey, Rhode Island, Vermont, and Washington D.C. Most of these states follow a similar penalty structure as the former Federal Individual Mandate.
- As of February 1, 2021, Vermont has not yet announced its penalty structure. Massachusetts had its own individual health-care coverage penalty, which predates the Federal Individual Mandate. Other states may follow suit with individual state mandates, including Maryland, Minnesota, Washington, Hawaii and Connecticut. It remains unclear how the patchwork of individual mandates will impact employer compliance (especially with multi-state operations) other than creating more complexity.

What Role Do the Exchanges Play?

Exchanges Offer Health Coverage to All and Subsidies to Eligible Individuals

Individuals who are eligible for a tax subsidy to offset the cost of health coverage are those with an annual Household Income of at least 100%

and no more than 400% of the Federal Poverty Line (FPL).[12] (see Section 36B(c)). For example, using the U.S. Department of Health and Human Services (HHS) 2016 figures for an individual with no dependents, the range of applicable salaries is $11,880 to $47,520. The FPL salary range for an individual with a non-working spouse and two children is $24,300 to $97,200. This range captures virtually all full-time employees that are paid at the federal minimum wage. For example, if that same individual with no dependents earned $8.50 per hour, 30 hours per week, 48 weeks per year (to exclude four weeks of unpaid holidays, sick or vacation days), they would earn $12,240 annually, well within the 100% to 400% of FPL.

Under the ACA, a single streamlined process is made available to allow for application of both the Exchanges and certain federal assistance programs, including Medicaid and the states' children's health insurance program (CHIP) (see ACA §1413 (codified in 42 U.S.C. §18083)).

What Are Employees Required to Do?

Obtain Health Coverage

Employees who do not have access to Minimum Essential Coverage, or such Minimum Essential Coverage does not meet Affordability and/or Minimum Value requirements, may be eligible to receive premium assistance to offset the cost of coverage through an Exchange (see ACA §1411 (codified as 42 U.S.C. §18081)).

The amount of the monthly premium assistance is determined by the lesser of: (a) the monthly premiums to cover a taxpayer and his or her dependents under Qualified Health Plan enrolled in the Exchange; or (b) the excess (if any) of the adjusted monthly premium for the applicable second-lowest-cost silver plan with respect to the taxpayer over any amount equal to one-half of the product of the Applicable Percentage and the taxpayers' Household Income (see IRC Section 36B(b)).

The Applicable Percentages are determined based on Household Income within each income tier as set forth in the chart below.

To determine whether an employee qualifies for Premium Tax Credits, the employee's Household Income will need to be calculated. To qualify, the Household Income must fall between 100% and 400% of the FPL (see IRC Section 36B(c)).

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is	The final premium percentage is
Up to 133%	2.00%	2.00%
133% up to 150%	3.00%	4.00%
150% up to 200%	4.00%	6.30%
200% up to 250%	6.30%	8.05%
250% up to 300%	8.05%	9.50%
300% up to 400%	9.50%	9.50%

See IRC Section 36B(3)(A)(i)

Additionally, the ALE must either (a) have failed to offer Minimum Essential Coverage to the employee and his or her dependents; or (b) offered coverage but the self-only coverage was not Affordable and/or did not meet Minimum Value.

Certain applicable individuals enrolled in a Qualified Health Plan on the Exchange may also be entitled to a "Reduction in Cost-Sharing." This program first requires reductions of the out-of-pocket limit according to the following schedule: (a) reduction by two-thirds for those with Household Incomes between 100% and 200%; (b) reduction by one-half for 200% to 300%; and (c) reduction by one third for 300% to 400%.

According to ACA §1402 (codified in 42 U.S.C. §18071), an additional reduction is available for lower income insureds of a Qualified Health Plan such that the plan covers: (a) 94% of the costs for insureds whose Household Incomes are between 100% to 150%; (b) 87% of the costs for insureds whose Household Incomes are between 150% to 200%; and (c) 73% of the costs for insureds whose Household Incomes are between 200% to 250%.

In other words, individuals with incomes between 100% and 400% of the FPL may be eligible for tax credits to reduce the cost of their monthly premiums. In addition, individuals with incomes between 100% and 250% of the FPL may qualify for cost-sharing subsidies that will reduce their deductibles, copayments, and coinsurance. An individual can enroll on the Exchange by completing the application online via the Exchange's website. Enrollment may also be accomplished in person, by mail, and by telephone.

Once an application is submitted to the Exchange, the Exchange may initially assess or determine eligibility and enrollment for certain federal assistance, including Medicaid. Such determination includes a verification of certain information by the Secretary of Homeland Security, Secretary of the Treasury, and Commissioner of Social Security.

The Exchange will determine eligibility for advance payments of Premium Tax Credits as well as cost-sharing reductions. As part of that determination, the Exchange will verify household income and family size through tax return information from the Treasury. Upon verification of eligibility, the Exchange is required to provide notice to the employee and employer. As part of the notice to the employer, the Exchange must provide the following:

(a) identification of the employee;
(b) indication that the employee has been determined to be eligible for advanced payments of the Premium Tax Credits;
(c) indication that the employer may be liable for payment under Section 4980H if the employer is an Applicable Large Employer; and
(d) notice of the employer's right to appeal.

The penalty corresponds only to those employees who receive an applicable Premium Tax Credit or cost-sharing allowance.

What Are the Penalties?

Assessable Payment to Be Paid by Employer

A. Employers Who Do Not Offer Minimum Essential Coverage

Applicable Large Employers (ALEs), must provide the opportunity for full-time employees to enroll in Minimum Essential Coverage under an Eligible Employer Sponsored Plan. If at least one full-time employee in any given month has been certified[13] as having been enrolled in that same month in a health plan through an Exchange, and for which the employee was allowed or paid a Premium Tax Credit (PTC) or cost-sharing reduction, that ALE will be obligated to make an "assessable payment equal to the applicable payment amount times the number of individuals employed by the employer as full-time employees during such month" (see IRC Section 4980H).

With respect to any month in 2019, the applicable payment amount is 1/12 of $2,500, adjusted annually.[14] The employer who does not provide health insurance for a given month is assessed at a rate of 1/12 of $2,500 (adjusted annually) for each full-time employee each month. Note that the number of full-time employees "shall be reduced by 30 solely for purposes of calculating" the assessable payment.[14] In other words, the first 30 full-time employees are excluded from the $2,500 per employee penalty. For the 2020 year, the adjusted penalty is $2,570 for each full-time employee.

B. Employers Whose Coverage Does Not Meet Minimum Value and/or Affordability Requirements

Employers who offer Minimum Essential Coverage with self-only coverage that does not meet Affordability and/or Minimum Value requirements are subject to tax penalty.

The penalty corresponds only to those employees who receive an applicable Premium Tax Credit or cost-sharing allowance. On a monthly basis, if one or more full-time employees had been certified as having enrolled in a qualified health plan through the Exchange for which the employee has received or been allowed an applicable Premium Tax Credit or cost-sharing allowance, the employer will be assessed a payment for all such certified employees.[14] For any month in 2020, the aggregate tax penalty is computed by the product of 1/12 of $3,860 and the number of certified employees.[15] However, there is an overall penalty limitation calculated by the Section 4980H(a) penalty times the total number of full-time employees minus 30 (see IRC Section 4980H(b)(2)).

To avoid penalties for failing to offer eligible Minimum Essential Coverage, an employer must make a lowest cost option available to all full-time employees. A conservative low-cost option is likely to be based on the 9.5% affordability ceiling (adjusted annually) for premium costs, corresponding to the lowest earning full-time employee with no dependents. Of course, having a low-cost option does not preclude the employer

from providing other more costly plans. The key is making the low-cost option available. In view of the Minimum Essential Coverage requirements, insurers are likely to always have that option available.

Although there was transition relief for employers available during 2015, virtually all of such transition relief no longer applied for plans starting in the 2016 year (see Final Regulations).

C. Penalty Assessment Process

An ALE who has employees who properly obtained Premium Tax Credits and/or reductions in cost-sharing through the Exchange may be subject to penalties under Section 4980H. Under the ACA, upon notice of Section 1411 Certification, such employers are allowed a 90-day window to appeal the assessment.[16] The employer will have access to the data used to make the determination to the extent allowable by law, including whether the employee's income is above or below the threshold for Affordability, and have the opportunity to present information to the Exchange.

If an employee has obtained Premium Tax Credits through the Exchange, the employer may be liable for penalties under the Employer Mandate.

The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any tax liability is assessed. The contact for a given calendar year will not occur until after employees' individual tax returns are due for that year claiming Premium Tax Credits and after the due date for ALEs to file

the information returns identifying their full-time employees and describing any healthcare coverage that was offered. Once notified and given the opportunity to respond, the IRS will then send notice and demand for payment.

What Are the IRS Reporting Requirements?

The ACA reporting obligations require monthly tracking of employee work hours and wages, covered dependents information, and premiums-related information.

A. W-2 Reporting

For tax years after 2011, the ACA has generally been requiring all employers with 250 or more W-2s to report the total costs for employee health benefits for employer-sponsored group health coverage (see ACA §9002 (codified as 26 U.S.C. §6051(a)(14)). The reporting began in January, 2013. The principle behind this reporting obligation is to provide useful and comparable consumer information on the cost of healthcare coverage to employees.

Specifically, the report requires identification of the aggregate cost of employer-sponsored health coverage for each employee and his or

her dependents on the employee's W-2 form, in box 12 with code "DD." The specific items that are required are listed at https://www.irs.gov affordable-care-act/form-w-2-reporting-of-employer-sponsored-health-coverage. Notably, Flex Spending Accounts funded solely by salary reductions to the employee, Health Savings Arrangement (HSA) contributions, and Archer Medical Savings Account (Archer MSA) contributions are not to be reported.

B. Coverage Reporting - Applicable Large Employers

The ACA imposes on Applicable Large Employers (ALEs) certain reporting and disclosure requirements with respect to applicable employees (see ACA Section 1513 (codified as 26 U.S.C. §6056); see also IRS Final Reporting Regulations, Fed. Reg. Vol. 79, No. 46 (March 10, 2014). These reporting and disclosure requirements are due on an annual basis for the prior tax year, starting in 2015.

Pursuant to the IRS Final Reporting Regulations, the IRS has provided IRS Forms 1094-C and 1095-C and accompanying instructions on completing these forms (see IRS Final Instructions on IRS Forms 1094-C and 1095-C). Form 1094-C is the transmittal form, which requires monthly information about each ALE member, including whether certain qualifying-offer methods apply, whether Minimum Essential Coverage was offered to 95% of the full-time employees and their dependents, the total employee count, total full-time employee count and identification of all ALE members. ALE member information requires employer aggregation analysis under IRC Section 414(b), (c), (m) and (o).

Form 1095-C requires comprehensive information for each month of the reporting year about each full-time employee, including the nature of the coverage offered to the employee, the lost cost monthly premium for self-only coverage, and applicable safe harbor codes. Reporting on the nature of coverage includes whether the Minimum Essential Coverage was offered to employee, spouse and/or dependents, whether spousal coverage was conditional, enrollment status, employment status, applicability of any affordability safe harbors (FPL, W-2 safe harbor or rate of pay), application of limited non-assessment periods, and other indicator codes relating to the type of offer of coverage. Self-insured ALEs have additional information requirements pertaining to covered individuals.

What Are the State Reporting Requirements?

Multiple states now require both individual mandates and corresponding employer health coverage reporting.

A. California

California implemented its own individual mandate, effective January 1, 2020, requiring state residents and dependents to obtain minimum essential coverage or pay a penalty (see SB 78, amending Cal. Gov. Code Section 100700). The California Franchise Tax Board (FTB) has released detailed information pertaining to the state's individual mandate.[17]

Individuals must report on their healthcare coverage to the FTB when filing state tax returns. A California state resident who failed to obtain

qualifying health coverage for the entire duration of the tax year will be subject to a penalty — the Individual Shared Responsibility Penalty (ISRP). The ISRP will be the higher of either: 1) a flat amount, based on the number of people in the tax household, or 2) a percentage of the household income.

For 2020, California residents who did not have coverage for themselves and their dependents, and did not qualify for an exemption, must pay the higher of either 1) a base flat amount of $695 per adult or more and half that per child, adjusted annually or 2) pay 2.5% of the amount of gross income that exceeds the filing threshold requirements based on the tax filing status and number of dependents.[18] Individuals interested in seeing their estimated penalty for the 2020 tax year should review the individual shared responsibility penalty estimator provided by the FTB.[19]

Correspondingly, all employers sponsoring health coverage for California resident employees need to comply with state level reporting to track compliance with ISRP by California residents.[20] This reporting is in addition to the federal requirement to furnish Forms 1095-C to employees and file with the IRS (along with Form 1094-C). Forms 1094-C and 1095-C (parts I, II and III completed) are used to report health insurance coverage of their employees to the state.[21]

For the 2020 year, the furnishing deadline was January 31, 2021 and filed with the California Franchise Tax Board by March 31, 2021 (deadline extended to May 31, 2021).[22] The draft form of Publication 3895C (as of November 11, 2020) can be viewed on the FTB website.[23]

Beyond those identified here, a number of other states are considering adding their own individual mandates.

Employers are subject to a penalty of $50 per return for failure to comply with the employer reporting requirement.[24]

B. New Jersey

Starting on January 1, 2019, under the New Jersey Health Insurance Market Preservations Act, New Jersey began its own individual mandate, requiring its residents to obtain health coverage or be subject to an Individual Shared Responsibility Payment (SRP).[25]

The amount of this penalty is based on the statewide average annual premium for Bronze Health Plans in New Jersey and depends on household income and size. For the 2020 year, the penalty starts at a minimum of $695 for a household size of 1, up to a maximum of $3,012. For a family with two adults and three dependents and a household income of (a) $200,000 or below, the minimum penalty is $2,351, and the maximum $5,074, (b) $200,001 and $400,000, the minimum penalty is $2,351 and the maximum penalty is $9,500, if $400,001 or more, the minimum penalty is $2,351 and the maximum penalty is $16,980.[26] State

residents interested in seeing their estimated penalty for the 2020 tax year should review the ISRP estimator provided by the Official Site of the State of New Jersey.[27]

To verify health coverage reporting by individual taxpayers, the New Jersey Health Insurance Market Preservation Act (NJA3380) also requires state level employer reporting. This reporting requirement is in addition to the federal requirement to furnish Forms 1095-C to employees and file with the IRS (along with Form 1094-C). Fully insured employers can avoid reporting only if they ensure compliance with reporting by their insurer.

New Jersey has issued updated guidance regarding state-level ACA health insurance employer reporting.[28] This reporting requirement is in addition to the federal requirement to furnish Forms 1095-C to employees and file with the IRS (along with Form 1094-C). Fully insured employers can avoid reporting only if they ensure compliance with reporting by their insurer.

Form 1095-C (parts I and III completed) or NJ-1095 can be used to report health insurance coverage of their employees to the state.[29]

For the 2020 reporting year, the filing deadline is March 31, 2021, and the Forms distribution deadline is March 2, 2021.[30]

Penalties for employer reporting noncompliance not yet announced.

Fully insured employers can avoid reporting only if they ensure compliance with reporting by their insurer.

C. Rhode Island

Rhode Island's individual penalty went into effect in January of 2020 (see R.I. Gen. Laws Section 44-30-101.[31] Rhode Island residents must maintain minimum essential healthcare coverage beginning January 1, 2020, or a Shared Responsibility Payment Penalty (SRPP).

The SRPP is the greater of a flat amount of $695 per adult and $347.50 per child based on the number of people in a household or 2.5% of the household gross income that exceeds certain filing threshold requirements.[32]

Correspondingly, all employers offering MEC to RI resident employees must submit state level reporting to track compliance with SRPP by residents.[33] This reporting requirement is in addition to the federal requirement to furnish Forms 1095-C to employees and file with the IRS (along with Form 1094-C). Fully insured employers can avoid reporting if their insurer complies.

Employers and health sponsors providing MEC to an individual will be required to file a return with the Division of Taxation and provide a return to the individual.[34]

For the 2020 year, the furnishing deadline of January 31, 2021 was extended to March 2, 2021. The filing deadline to RI's Dept of Revenue, Division of Taxation is March 31, 2021.[35]

Employers failing to report may be subject to a penalty, which is "reviewed on a case by case basis and addressed as its unique facts and circumstances warrant."[36]

D. Washington DC

Washington D.C. implemented its own individual mandate starting in 2019 (see Code of D.C. Section 47-5102). This is pursuant to the Individual Taxpayer Health Insurance Responsibility Requirement Amendment Act of 2018 (Ch. 51 to Title 47 of D.C. Official Code). It's important to note that the DC mandate does not apply to individuals who commute to work in DC, but do not reside there. An individual is considered a DC resident if his/her employer withholds wages and pays taxes to DC on their behalf or that individual has a mailing address in DC for any period during the applicable calendar year.

Those applicable individuals who fail to obtain health insurance coverage may be subject to a penalty of $695 for each adult and $347.50 for each child (up to $2,085 per family), or 2.5% of family income that is over the federal tax filing threshold, whichever is greater.[37]

It's important to note that the DC mandate does not apply to individuals who commute to work in DC, but do not reside there.

DC also requires every "applicable entity that provides minimum essential coverage to an individual during a calendar year" to submit an information return regarding such coverage to DC's Office of Tax and Revenue (OTR).[38] Applicable entities who are subject to DC reporting, include all employers that provide employment based health coverage and (a) are required to file Forms 1095-B or 1095-C to its employees or (b) covered at least 50 full-time employees, including at least one DC resident. Fully insured employers are subject to the DC reporting requirement.

This reporting requirement is in addition to the federal requirement to furnish Forms 1095-C to employees and file with the IRS (along with Form 1094-C). However, the same IRS Forms can be submitted to DC's Office of Tax and Revenue (OTR). All information returns are required to be filed electronically through MyTaxDC.org, as paper filings will not be accepted.

The first annual filing deadline (for 2019 reporting) was June 30, 2020. For subsequent years, the filing deadline is 30 days after the IRS deadline.

The furnishing deadlines are the same for the IRS.

A penalty for noncompliance has not been adopted.

E. Massachusetts

Before the enactment of the ACA, Massachusetts had its own "affordable care act" in 2006 (see Massachusetts' "Act Providing Access to Affordable, Quality, Accountable Health Care," Ch. 58 (2006)).[39] Once the ACA went into effect, the Massachusetts law coordinated with the federal

ACA law. Now, with the elimination of the federal individual mandate, the state mandate remains.

Individuals who fail to obtain coverage will be subject to a penalty, which varies in amount depending on age, income and family size.[40] The penalties, which will be imposed through the individual's personal income tax return, do not exceed 50% of the minimum monthly insurance premium for which an individual would have qualified through the Massachusetts Health Connector. For 2020, for example, an individual earning over 300% of the Federal Poverty Level is subject to a penalty of $135 per month, or $1,620 per year. Two parents with one child, without coverage for all of 2020 and earning above 300% of the Federal Poverty Line are subject to an annual penalty of $3,240.[41]

On the employer side, if the insurance carrier does not furnish, the employer must furnish Form MA 1099–HC, Individual Mandate Massachusetts Health Care Coverage to employees, and file with the Massachusetts Department of Revenue.[42] Form MA 1099-HC is similar to Form 1095-B. This reporting requirement applies for all covered individuals residing in Massachusetts to whom the employer provided creditable coverage. However, most insurance carriers will issue this form on behalf of employers and send to the state a report listing all Form MA-1099-HCs.

Form 1099-HC is due by January 31 following the year of coverage. Form 1099-HC should be electronically filed through MTC.

A penalty of $50 per employee with an overall cap of $50,000 is assessed if an employer fails to submit Form 1099-HC.

Additionally, employers with 6 or more employees are also required to annually submit the Health Insurance Responsibility Disclosure (HIRD) Form. This includes employers who are out of state who have at least 6 employees within the state. The HIRD Form reports on employer level information about the employer sponsored insurance offerings. The HIRD form is due no later than December 15 of the filing year, and must be completed electronically on MassTaxConnect (MTC) web portal, which is administered by the Dept of Revenue (DOR). There are no penalties relating to the HIRD form.

Additionally, a number of other states are also potentially considering their own individual mandates. These include Maryland, Minnesota, Washington, Connecticut and Hawaii.

F. Vermont and Other States

Vermont passed its own individual mandate, which took effect on January 1, 2020 (see Section 1 of VT H0524 amending 32 V.S.A. Ch. 244.[43] Although individuals are required to self-report whether they had ACA-compliant insurance during the tax year on their tax returns, there is no penalty for failing to obtain such coverage.

Additionally, a number of other states are also potentially considering their own individual mandates. These include Maryland, Minnesota, Washington, Connecticut and Hawaii. With the Tax Cuts and Jobs Act zeroing out the federal Individual Mandate penalty just as of 2019, it is anticipated that more states will follow with their own individual mandates.

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Employee Notice Requirements

The ACA amends the Fair Labor Standards Act to impose certain notice obligations to employers.

Under Section 1512,[44] employers must give written notice of the following information about the ACA (see ACA Section 1512 (codified as Section 18B of FLSA, 29 U.S.C. §218B)):

(1) Informing employees of the existence of the Exchange, including a description of the services provided by the Exchange and the manner in which the employee may contact the Exchange to request assistance.

(2) If the employer's plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, that the employee may be eligible for Premium Tax Credits and a cost sharing reduction if the employee purchases a qualified health plan through the Exchange.

(3) If the employee purchased a Qualified Health Plan through the Exchange, the employee will lose the employer's contribution (if any) to the health benefits plan offered by the employer and that all or a portion of such contributions may be excludable from income for Federal income tax purposes.

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References:

[1] While an effort has been undertaken in compiling the information contained in this article to ensure its contents are accurate, neither the author nor Trusaic, accepts any liability for any actual inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it. This article is provided based on the understanding that this article provides general information and is not intended to constitute legal or accounting advice. Readers should always seek appropriate professionals for such advice.

[2] A "seasonal worker" includes workers covered by 29 C.F.R. Section 500.20(s)(1) and retail workers employed exclusively during holiday seasons. See IRC Rule 54.4980H-1(39).

[3] Note, the term "full-time" for purposes of determining eligibility for an offer of coverage is distinct from the term "full time" for purposes of ALE status determination. See section II.A below.

[4] Despite the clear wording of the statute, the IRS has signaled that "all" is contemplated to mean "substantially" all employees – i.e., 95%, for purposes of avoiding penalties, with the exception of 2015, when "all" was set at 70% as transition relief.

[5] Under the Employer Mandate, an ALE is obligated to offer Minimum Essential Coverage to full-time employees, defined as employees who average at least 30 hours of service per week, and their "dependents." However, "dependents" do not include spouses. If, the ALE offers spousal coverage, but does not contribute to the premium (which the ALE is not obligated to do), the spouse would not be eligible for a tax credit subsidy. Moreover, although the Employer Mandate requires the ALE to offer dependent coverage, the ALE is not required to contribute to pay for the premium. In other words, the "affordability" requirement is based solely on self-only coverage.

[6] The Health Insurance Marketplace exchanges ("Exchanges'') include an exchange established by a state to make available qualified health plans to qualified individuals and qualified employers, facilitate the purchase of qualified health plans, and provide for the establishment of a Small Business Health Options Program ("SHOP") that is designed to assist small employers in enrolling employees in qualified health plans offered by the Exchange. Those states that have not established their own Exchange can elect to join the federal Exchange.

[7] "Household Income" depends on the total income of the household. The term specifically is defined as the total of (a) the modified adjusted gross income of the taxpayer and (b) the aggregate of the modified adjusted gross income of all individuals who were taken into account in determining the taxpayer's "Family Size" and were required to file a tax return. Family Size means the number of individuals for whom the taxpayer is allowed a deduction.

[8] This percentage is adjusted annually. For plan years beginning in 2015, the threshold is 9.56 percent. (See IRS Rev. Procedure 2014-37.) For plan years beginning in 2016, the threshold is 9.66 percent. (See IRS Rev. Procedure 2014-62.) For plan years beginning in 2017, the threshold is 9.69 percent. (See IRS Rev. Procedure 2016-24.) For plan years beginning in 2018, the threshold is 9.56 percent. (See IRS Rev. Procedure 2017-36.) For plan years beginning in 2019, the threshold is 9.86 percent. (See IRS Rev. Procedure 2018-34.)

[9] Starting January 1, 2014, certain states expanded Medicaid to cover those with Household Incomes at or below 138% of the FPL. (See ACA §2000(a) ((amending Section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. §1396a(10)(A)(i)(VIII) and 42 C.F.R. §435.603 (defining "Household Income" as the sum of the modified adjusted gross income minus 5% of the FPL)). As of January 4, 2018, 37 states (including DC) have adopted Medicaid expansion to 138% FPL. The Supreme Court's decision in National Federation of Independent Business et al. v. Sebelius (June 28, 2012) effectively gave states the choice as to whether to adopt Medicaid. See https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/. The FPL is adjusted annually.

[10] This Individual Mandate penalty was subject to certain exemptions, including an individual (a) for whom Minimum Essential Coverage would cost more than 8% of their Household Income, (b) with Household Income below the filing threshold, (c) who is a member of an Indian tribe, (d) who has a coverage gap for a continuous period of less than 3 months, and (e) hardship.

[11] Source: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Employer-Notice-FAQ-9-18-15.pdf

[12] California has expanded the range of household income to include Annual Household Incomes between 400 to 600% of the FPL.

[13] Such certifications are known as "Section 1411 Certifications." See 26 C.F.R. Section 54.4980H-4(a).

[14] There was transitional relief for 2015 only to increase the 30 "freebie" number to 80. See Final Regulations, at 8576, n.16.

[15] This amount increases annually for inflation, based on the premium adjustment percentage. For example, for 2015, that percentage was 4.213431463. See Fed. Reg. Vol 79, No. 47 (Mar. 11, 2014). If the amount is not a multiple of $10, the amount is rounded to the next lowest multiple of $10. See IRC Section 4980H(c)(5). For 2015, this translated to a 4980H(a) penalty of $2,080 and the annualized Section 4980(b) penalty of $3,120. For 2019, the annualized Section 4980H(a) penalty is $2,500 and the annualized Section 4980H(b)penalty is $3,750.

[16] Notably, HHS's Centers for Medicare and Medicaid ("CMS'') indicated that the IRS may impose Section 4980H penalties for 2015 reporting regardless of whether the Exchange provides prior notice (a Section 1411 Certification) to the employers. See CMS FAQs (https://www.cms./gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Dowloads/Employer-No- tice-FAQ-9-18-15.pdf). Consistently, the IRS has issued Section 4980H penalties for 2015 despite the absence of such prior notice to employers. This appears to be inconsistent with Section 4980H and Section 1411, which indicate that Section 4980H penalties require Section 1411 Certification to assess any Section 4980H penalties.

[17] Source: https://www.ftb.ca.gov/about-ftb/newsroom/health-care-mandate/index.html

[18]Source: Cal. Rev. & Tax Code §61015.

[19]Source: https://www.ftb.ca.gov/file/personal/filing-situations/healthcare/estimator/

[20]Source: Cal. Rev. & Tax Code §61005.

[21]Source: https://www.ftb.ca.gov/file/business/report-mec-info/2020-3895c-publication-draft.pdf

[22]Ibid.

[23]Ibid.

[24]Ibid.

[25]Ibid.

[26]Source: https://nj.gov/treasury/njhealthinsurancemandate/responsibilitypayment.shtml

[27]Ibid.

[28] Source: https://nj.gov/treasury/njhealthinsurancemandate/employers.shtml

[29]Ibid.

[30]Ibid.

[31]Source: http://www.tax.ri.gov/healthcoveragemandate/

[32]Source: https://healthsourceri.com/mandate/#.

[33]Ibid.

[34]Source: http://www.tax.ri.gov/healthcoveragemandate/IndividualMandate_ReportingRequirements_FAQ.pdf

[35]Ibid.

[36]Source: http://www.tax.ri.gov/healthcoveragemandate/Mandate%20Regulation%20Comment%20Responses%20-%20Taxation.pdf

[37]Source: https://www.dchealthlink.com/individual-responsibility-requirement#penalty

[38]Source: https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/FAQ%20reporting%20SRP%20%288.6.19%29.pdf

[39]Source: Mass. Gen Law. c. 111M.

[40]Source: https://www.mass.gov/info-details/health-care-reform-for-individuals#penalty

[41]Source: https://www.mass.gov/technical-information-release/tir-20-1-individual-mandate-penalties-for-tax-year-2020

[42]Source: https://www.mass.gov/service-details/health-care-reform-for-employers

[43]Source: https://www.billtrack50.com/BillDetail/1104040

[44]Although Section 18B of the FLSA was intended to go into effect on March 1, 2013, on January 24, 2013, the Department of Labor announced that the notice requirement would start on October 1, 2013. The scope of employers' subject to the notice requirement are those that employ one or more employees with volume of business no less than $500,000 (e.g. subject to FLSA).