

Would Failure to Offer Coverage to an Employee's Spouse Potentially Result in Employer Shared Responsibility Penalties?

EBIA Weekly (May 29, 2025)

QUESTION: We are a large employer with thousands of employees. As a way of reducing overall benefit costs, only employees and their dependent children are offered coverage under our company's group health plan. We do not extend coverage to an employee's spouse. Would spousal exclusion subject us to penalties under the Affordable Care Act's employer shared responsibility requirements? What if an employee's spouse received subsidized coverage on the Exchange?

ANSWER: The failure to offer health coverage to an employee's spouse would not subject your company to penalties under the employer shared responsibility rules. As background, an applicable large employer (ALE) (generally employing an average of at least 50 full-time employees, including full-time equivalent employees) may be subject to penalties for failing to offer coverage to full-time employees and their dependents. For this purpose, "dependents" means an employee's children, as defined in Code § 152(f)(1), who are under 26 years of age (but does not include stepchildren or foster children).

For purposes of employer shared responsibility penalties, the term "dependents" does not include any individuals other than an employee's children, as defined above. Thus, an ALE is not required to offer coverage to an employee's spouse to avoid employer shared responsibility penalties. Even if an employee's spouse purchased subsidized coverage on the Exchange (i.e., received a premium tax credit), your company would not be subject to penalties. This is because a penalty generally applies only if a full-time employee is certified to the employer as having received a premium tax credit for coverage purchased through an Exchange.

For more information, see EBIA's Health Care Reform manual at Sections XXVIII.D ("Assessable Payment (Penalty Tax) When Coverage Not Offered to Enough Full-Time Employees and Dependents (the 'Subsection (a) Penalty')"), XXVIII.E ("Assessable Payment (Penalty Tax) When Inadequate Coverage Offered to Full-Time Employees and Dependents (the 'Subsection (b) Penalty')"), and XXI.G ("Premium Tax Credits"). See also EBIA's Self-Insured Health Plans manual at Section XIV.E ("Beneficiary Eligibility").

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