

IRS Asserts No Statute of Limitations for ACA Violations; May Require New Record Retention Policies

When it comes to complying with the law, the expiration of a statute of limitations can be a welcome relief for employers trying their best to be legally compliant, but discovering that they were not 100 percent correct with respect to something done several years ago. The Internal Revenue Service (the IRS), however, has issued a memorandum asserting that that they believe no statute of limitations applies to penalties relating to an employer's obligation to pay penalties for failing to offer medical coverage to full-time employees under the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act).

The Law

The Affordable Care Act imposes the larger of two potential penalties on employers with at least 50 full-time employees (known as Applicable Large Employers) who do not offer medical coverage that meets Affordable Care Act requirements. Employees who work 30 or more hours per week are generally considered full-time employees under the Affordable Care Act.

Beginning in 2015, Applicable Large Employers who failed to offer health coverage meeting certain minimum value and affordability standards to at least 95 percent of its full-time employees (the Minimum Coverage Requirement) and had at least one of its full-time employees receive a tax credit to purchase coverage from an Affordable Care Act exchange became subject to a \$2,000 penalty per full-time employee, excluding the first 30 employees. This \$2,000 per employee penalty is currently \$2,570 for 2020 violations due to inflationary adjustments.

Similarly, if any full-time employee of an Applicable Large Employer received a tax credit to purchase coverage on an exchange, it resulted in a \$3,000 penalty to the employer if the employer had not offered that employee coverage meeting certain minimum value and affordability standards. This \$3,000 per employee penalty applied even if the employer has offered coverage to at least 95 percent of its full-time employees. The penalty has been increased to \$3,750 for 2020 violations due to inflationary adjustments.

The IRS Memorandum

Penalties under the Internal Revenue Code are generally subject to a three-year statute of limitations beginning on the date on which a tax return is filed, or the date the tax is due, whichever is later. In its recent memorandum, the IRS has taken the position that the Affordable Care Act penalties described above are not subject to a statute of limitations because there is no tax return for employers to send to the IRS that allow the employer to calculate these penalties on their own. The penalties are calculated and applied only if an employer has at least one, full-time employee who received a tax credit due to purchasing coverage on an exchange. Employers should be cognizant of this potential liability.

Additionally, given that the IRS is taking the position that no statute of limitations applies to these Affordable Care Act penalties, employers would be wise to indefinitely keep records showing any and all offers of health coverage that were made to full-time employees, and how the full-time status for each employee was determined.



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Attorneys in Cozen O'Connor's employee benefits and executive compensation group frequently counsel employers on their Affordable Care Act obligations and ways to minimize any applicable penalties. We have also been successful in helping to eliminate penalties imposed by the IRS due to inaccurate reporting provided by the employer as part of its annual Forms 1094-C and 1095-C filings.