



Top 5 Health Care Reform FAQs

FEBRUARY 2015

Next month marks the five-year anniversary of the [Affordable Care Act](#) (ACA). While many of the requirements for employers and group health plans are already in effect, the questions continue to roll in. Here's a look at five of the most common questions and answers surrounding the law:

1. Are small employers required to provide health insurance to full-time employees?

Under the ACA, small employers--generally those with fewer than 50 full-time employees, including full-time equivalents--are not penalized for choosing not to offer coverage to any employee. Effective as of January 1, 2015, large employers subject to "[pay or play](#)" may be liable for a penalty tax if they do not offer affordable health insurance that provides a minimum level of coverage to full-time employees (and their dependents, unless transition relief applies).

2. Do employers need to offer the same coverage to all employees?

Similarly situated individuals must be treated equally. Distinctions among groups of similarly situated employees may be permitted if they are based on bona-fide employment-based classifications consistent with the employer's usual business practice--for example, full- and part-time employees. The IRS has [delayed the requirement](#) under the ACA that fully insured group plans comply with rules "similar" to the rules prohibiting discrimination in favor of highly compensated individuals that currently apply to self-insured plans. However, health benefits offered as part of a cafeteria plan (a plan which meets specific requirements to allow employees to receive certain benefits on a pre-tax basis) generally will be subject to the nondiscrimination requirements of Internal Revenue Code [section 125](#).

3. Will an employer be liable for a "pay or play" penalty if one of its employees purchases health insurance through a Marketplace?

A large employer will only be liable for a penalty if at least one full-time employee receives a [premium tax credit](#). In general, an employee will not be eligible for a premium tax credit if the employer has offered the employee health coverage that is affordable and that provides minimum value, even if the employee rejects the offer of coverage and instead enrolls in coverage through a Marketplace.

4. Can employers reimburse employees for premiums paid for individual health insurance policies?

No. Arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, or arrangements under which the employer uses funds to directly pay the premium for an individual health policy covering the employee, will [violate the ACA](#) and may be subject to a \$100/day excise tax per employee. An employer-sponsored arrangement under which employees may choose either cash or an after-tax amount to be applied toward health coverage is permissible.

5. How does the law impact tax-favored accounts such as HSAs and health FSAs?

The ACA [prohibits](#) tax-favored distributions from health savings accounts (HSAs) to reimburse the cost of over-the-counter medicines or drugs that are not prescribed, except for insulin. A similar rule applies to health reimbursement arrangements (HRAs) and health flexible spending accounts (FSAs). **HRAs must be "integrated"** with other group health plan coverage in order to satisfy certain ACA requirements, and may no longer be used for an employee's individual insurance policy premiums. **A health FSA must qualify as [excepted benefits](#)** and be offered through a cafeteria plan to comply with the law. In addition, the ACA requires that salary reduction contributions to health FSAs be limited to \$2,500 annually, indexed for inflation (for taxable years beginning in 2015, the limit is \$2,550).

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Visit our [Health Care Reform](#) section for answers to other frequently asked questions and additional guidelines and tools to help companies with compliance.

If you would like more information on the new ACA employer requirements, you can contact your Account Manager to set up a conference call with our new Health Care Reform Specialist.

Additional Guidance on Retroactive Increase for 2014 Monthly Transit Benefits

IRS [guidance](#) on how to apply the retroactive increase for monthly transit benefits in 2014 is now available for employers. As announced in December, the monthly exclusion for combined commuter highway vehicle transportation and transit passes was retroactively increased from \$130 to \$250, until January 1, 2015.

The guidance provides a special administrative procedure for certain employers that treated "excess transit benefits"--i.e., in excess of \$130 and up to \$250--as wages and did not yet file their fourth quarter Form 941 for 2014 (due February 2nd). Employers that already filed the fourth quarter Form 941, or that have not repaid or reimbursed employees prior to filing the fourth quarter Form 941, must use [Form 941-X](#), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and normal procedures (described in the guidance) to make an adjustment or claim a refund for any quarter in 2014.

[Notice 2015-2](#) explains both the special administrative and normal procedures in more detail, and provides employer instructions for Form W-2.

For more on employer-provided transportation benefits, please visit our section on [Fringe Benefits](#).

OSHA Summary of Work-Related Injuries and Illnesses Must Be Posted From February 1 - April 30

Employers subject to the recordkeeping requirements of the federal [Occupational Safety and Health Act](#) (generally those employers with more than 10 employees, except for those in certain low-hazard industries in the retail, finance, insurance, real estate, and service sectors) are reminded to post OSHA [Form 300A](#), *Summary of Work-Related Injuries and Illnesses*, from February 1 to April 30, 2015.

The Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year and **must be posted even if no work-related injuries or illnesses occurred during the year**. The summary must be signed and certified by a company executive, and should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

Note: As of January 1, 2015, there is a [new list of industries that are partially exempt](#) from keeping OSHA records. Establishments that are newly exempted are not required to post the 2014 Form 300A..

Businesses located in states that operate their own safety and health programs should [check with their state plan](#) for the implementation date of the new recordkeeping and reporting requirements.

More information about employer responsibilities related to worker safety and health is available in our section on [Safety & Wellness](#).



Check out our employer-provided transportation benefits information in the [Fringe Benefits](#) section of our website.



For more information about employer responsibilities related to worker safety and health, view our online section on [Safety & Wellness](#).

3 Steps to Eliminating Sexual Harassment in the Workplace

As [highlighted](#) in a recent U.S. Equal Employment Opportunity Commission (EEOC) meeting, harassment of all types continues to be a major problem in the workplace. According to one speaker, one in four women faces harassment in the workplace.

Prevention is the best tool to eliminate harassment. Employers should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees, establishing an effective complaint or grievance process, and taking immediate and appropriate action when an employee complains.

What is Sexual Harassment?

Sexual harassment is a form of unlawful sex discrimination that can occur in a variety of circumstances. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct:

- Explicitly or implicitly affects an individual's employment;
- Unreasonably interferes with an individual's work performance; or
- Creates an intimidating, hostile, or offensive work environment.

Preventing and Correcting Sexual Harassment in the Workplace

Below are three actions the EEOC recommends employers take to prevent and correct workplace harassment.

- 1. Establish, distribute, and enforce a policy prohibiting harassment and setting out a procedure for making complaints.** An employer's anti-harassment policy should make clear that the employer will not tolerate sexual harassment or retaliation against anyone who complains of harassment or who participates in an investigation.
- 2. Conduct a prompt, thorough, and impartial investigation of any harassment complaint.** The investigator should interview the employee who complained of harassment, the alleged harasser, and others who could reasonably be expected to have relevant information. The alleged harasser should not have any direct or indirect control over the investigation.
- 3. Take immediate measures to stop confirmed harassment and ensure it does not recur.** Disciplinary measures should be proportional to the seriousness of the offense. The employer also should correct the effects of the harassment by, for example, restoring leave taken because of the harassment and expunging negative evaluations in the employee's personnel file that arose from the harassment.

Taking steps to eliminate sexual harassment in the workplace not only promotes a healthy and productive work environment, but it may also help an employer defend against liability in the event the employer is held responsible for unlawful harassment.

You can learn more about [sexual harassment](#) from the EEOC or by checking out our section on [Sex Discrimination](#).



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Retirement Planning Resources for Your Business

It's never too early to start taking advantage of the benefits of retirement planning. As a business owner, a retirement plan allows you to invest now for financial security when you and your employees retire. As a bonus, you and your employees can receive significant tax advantages and other incentives. Consider the following benefits of setting up a retirement plan:

Business Benefits

- Employer contributions are tax-deductible.
- Assets in the plan grow tax-free.
- Flexible plan options are available.
- Tax credits and other incentives for starting a plan may reduce costs.
- A retirement plan can attract and retain better employees, reducing new employee training costs.

Employee Benefits

- Employee contributions can reduce current taxable income.
- Contributions and investment gains are typically not taxed until distributed.
- Contributions are easy to make through payroll deductions.
- Compounding interest over time allows small regular contributions to grow to significant retirement savings.
- Retirement assets can be carried from one employer to another.
- A special tax credit known as the "[Saver's Credit](#)" may be available.
- The employee has an opportunity to improve financial security in retirement.

Retirement Plan Resources from the IRS

The [Small Business Retirement Plan Resources](#) provided by the Internal Revenue Service include helpful information for choosing, operating, and maintaining your retirement plan. Here is a list of resources to help you get started:

- [Types of Plans](#) - Starting and maintaining specific types of retirement plans
- [Publication 560](#) - Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- [Publication 3998](#) - Choosing a Retirement Solution for Your Small Business
- [Publication 4222](#) - 401(k) Plans for Small Businesses
- [Publication 4333](#) - SEP Retirement Plans for Small Businesses
- [Publication 4334](#) - SIMPLE IRA Plans for Small Businesses
- [Publication 4587](#) - Payroll Deduction IRAs for Small Businesses

Visit our section on [Retirement Plans](#) for additional resources and guidance.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

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