

Employer Premium Subsidy Notices are Coming! Now what?

Guidance and support in appealing employer premium subsidy notices

This year, for the first time, the federal government will be issuing premium subsidy notices to employers under the Affordable Care Act. This article offers advice to school districts on what to do if your district receives such a notice.

Under the Affordable Care Act, school districts considered to be applicable large employers must offer affordable health coverage to their full-time employees and dependents or face the possibility of paying one of the two “play or pay” penalties. The trigger to pay a penalty occurs if one or more of the district’s full-time employees purchases insurance through the health insurance exchange and receives a premium subsidy tax credit to help pay for that coverage.

So, how will employers know if an employee receives a premium subsidy? To make sure employers aren’t caught off-guard, the exchanges will send a notice to an employer whenever one of its employees receives a premium subsidy. As of this writing, Healthcare.gov, the federal exchange

operating in Wisconsin, has indicated it intends to begin issuing such notices in the first quarter of 2016 — obviously, we are past that timeframe; we expect the notices to start arriving very soon.

This article is meant to provide some guidance and support on what a district should do if they receive a notice that one of their employees received a subsidy for coverage offered through the public exchange. While we don’t expect school board members to be experts on this topic, it is important for board members to understand the significance of these issues and the ramifications of a district’s payroll/HR department failing to act upon receiving a notice.

■ What do I do if we receive a notice?

If you are an applicable large employer, such as a school district,

and the employee who received the premium subsidy is a full-time employee, then you should strongly consider appealing the notice. If the district doesn’t appeal the notice and the employee’s subsidy eligibility stands, you will almost certainly be assessed a “play or pay” penalty.

If you are not an applicable large employer or the employee is not a full-time employee, then the need to appeal is less urgent — the employee poses no “play or pay” penalty risk to you.

■ What if I don’t appeal?

It’s likely you will still be able to challenge the employee’s subsidy eligibility later when the Internal Revenue Service (IRS) actually assesses a “play or pay” penalty against the district. But, at this point, we don’t know for certain whether the IRS will give you that second opportunity so you are

This article is meant to provide some guidance and support on what a district should do to avoid a potential “pay” or “play” penalty if they receive a notice that one of their employees received a subsidy for coverage offered through the public exchange.

generally better off appealing now when you know you can.

Moreover, while the employee may immediately lose their premium subsidy if your appeal is successful, the employee may have to repay the entire premium subsidy they should never have received if you wait until later to challenge their subsidy eligibility. That is probably a much worse employee relations hit than appealing now.

■ What issues can I appeal?

An employee is disqualified from receiving a premium subsidy if they were offered affordable, minimum-value coverage by their employer. So in order to receive a subsidy, the employee must have told the exchange either:

- You did not offer them coverage;
- You offered coverage but it was not minimum value; or
- You offered minimum-value coverage but it was not affordable.

Those are the issues you can appeal — if you did offer the employee coverage; it was minimum value; and it was affordable. If you didn't offer this employee coverage, or the coverage was not minimum value or the coverage was not affordable, then there is usually no point in appealing.

■ How do I appeal?

This is where things get blurry. Every exchange has a different appeal process. And because the

federal exchange has yet to release its procedures, we cannot specify the exact terms of the process.

Typically the process starts with filing an appeal notice, which may involve completing a specific paper or online form or simply sending a letter stating you wish to appeal. From there, the exchange may request documentation to support your appeal, schedule a hearing, attempt to informally resolve the appeal or some combination thereof.

■ What documentation will I need to support my appeal?

That will depend on which issue triggered the employee's subsidy eligibility (which, initially you will not know) and your own internal benefits administration process.



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Broadly speaking you will need:

1. Documents proving that the employee was offered coverage and when.
2. Documents proving the coverage offered was minimum value.
3. Documents proving the employee's monthly cost of single coverage on the lowest cost minimum-value plan available to them.

■ Should I tell my employee I am appealing?

While not required, we encourage you to inform the employee that you intend to appeal the subsidy determination at or before the time you file your appeal. This should avoid the employee being surprised when they are told by the exchange that you are appealing.

But be cautious — you are not allowed to discriminate or retaliate against an employee because they received a subsidy. Don't say anything that may come across as threatening or suggest the employee will suffer some adverse employment action because they applied for a subsidy or if you succeed in your appeal.

■ What records should I keep and for how long?

You should hold onto all documentation concerning your appeal, including the employer premium subsidy notice; your supporting documentation; and the exchange's decision on appeal at least until the IRS is done assessing "play or pay" penalties for the year in question. Those records are also subject to the public records retention

requirements and should be kept in any case as is required by law.

Unfortunately, at this point, we don't know exactly how long the assessment process will take or when it will be completed for a given year, but there is a distinct possibility that it may be several years before the IRS starts sending out assessment notices. In other words, you may need records of an appeal from an employer premium subsidy notice you received in early 2016 well into 2017 or 2018. ■

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