

State Individual Mandates and Reporting Requirements

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Background

The ACA includes a requirement for individuals to either enroll in “minimum essential coverage” or pay a “Shared Responsibility Payment.” This requirement is known as the “Individual Mandate.” The first of these payments was required to be reported on 2014 federal income tax returns. The “Tax Cuts and Jobs Act,” signed into law on December 22, 2017, reduced the individual Shared Responsibility Payment to \$0. Therefore, the federal government will no longer assess payments to individuals who, as of January 1, 2019, were not enrolled in minimum essential coverage. ***Federal tax returns due on April 15, 2019, will still be used to assess payments for individuals who were not enrolled in minimum essential coverage during months in 2018.***

In response to this change, several states (and Washington D.C.) passed their own version of the Individual Mandate out of a concern that the federal payment’s being reduced to \$0 would cause state health insurance exchanges to collapse. To effectively enforce these new mandates, states have developed reporting requirements, which affect employers with employees in these states.

Massachusetts

Massachusetts, unlike other states, had an individual mandate in place even before the federal individual mandate payment was reduced to \$0. Information reporting by employers for these purposes are tied to an employer’s tax filings with the state. If an entity is considered a Massachusetts employer or “a non-Massachusetts employer who conducts business or maintains an office in Massachusetts,” that entity will be required to complete tax filings with the state of Massachusetts.

When this is the case, the employer will also be required to provide a Form 1099-HC to employees by January 31, and a report to the Massachusetts DOR (Department of Revenue) that includes details about the 1099-HC Forms delivered to employees by March 31. The state websites do not provide a minimum number of employees for this requirement to be in effect. However, if the employer is not providing health coverage, there will be no 1099-HCs to provide to employees and therefore nothing to report to the state.

Insurance carriers in the state of Massachusetts will generally provide Forms 1099-HC to employees, and submit an informational report to the DOR, on behalf of employers. However, self-insured employers will generally be required to complete this reporting themselves. Employers submitting information regarding 500 or more Forms 1099-HC should file using an XML File, whereas smaller plans can use the “Mapped Data Upload.” Failing to comply with these requirements could result in penalties equal to “\$50 per individual you failed to issue the form to, up to a maximum of \$50,000.”

<https://www.mass.gov/service-details/health-care-reform-for-employers>

New Jersey

New Jersey was the second state to enact an individual mandate, which went into effect on January 1, 2019. New Jersey employers and “Out-of-State employers that withhold and remit New Jersey Gross Income Tax for New Jersey residents” are both required to comply with the reporting requirements to “verify health coverage information provided by individual taxpayers.” Both Applicable Large Employers (as defined by the ACA) and employer plan sponsors of self-insured plans will be subject to this requirement.

Employer reporting associated with this mandate will be due for the first time on February 15, 2020. New Jersey updated its website on March 19, 2019, with additional information on the reporting process. New Jersey will be requiring employers to submit the same Forms 1094 and 1095 that were submitted to the federal government to the New Jersey government, using New Jersey’s W-2 filing system. More information about this process will be released on the following website:

<https://nj.gov/treasury/njhealthinsurancemandate/employers.shtml>

Washington D.C.

Washington D.C. signed an individual mandate into law in September 2018 that became effective on January 1, 2019. The Washington D.C. exchange website provides information about the payments individuals will be responsible to pay if they do not have qualifying coverage. However, there is currently no information regarding any employer reporting that will become necessary.

<https://dchealthlink.com/individual-responsibility-requirement>

Vermont

The Vermont individual mandate was signed into law on May 28, 2019. The mandate does not take effect until January 1, 2020. There is very limited information available on the details of this mandate and currently no information regarding any employer reporting that will become necessary.

<https://www.billtrack50.com/BillDetail/934009/2838>

Summary

It is possible that additional states will pass individual mandates that will require employers to provide information about employer provided health insurance to employees and to the state. Benefit Comply will continue to monitor developments as they occur. Questions regarding tax liability of employers within a state should be directed to a tax attorney or other subject matter expert.

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